CONCURRENT PAYMENT OF MILITARY RETIREMENT PAY AND VA COMPENSATION

HEARING

BEFORE THE

SUBCOMMITTEE ON COMPENSATION, PENSION, AND INSURANCE

OF THE

COMMITTEE ON VETERANS' AFFAIRS
HOUSE OF REPRESENTATIVES

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CONCURRENT PAYMENT OF MILITARY RETIREMENT PAY AND VA COMPENSATION

THURSDAY, APRIL 14, 1988

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:07 a.m., in room 337, Cannon House Office Building, Honorable Douglas Applegate (chairman of the subcommittee) presiding.

Present: Representatives Applegate, Bilirakis, McEwen, Evans, Penny, and Smith of New Hampshire.

OPENING STATEMENT OF CHAIRMAN APPLEGATE

Mr. APPLEGATE. Good morning, ladies and gentlemen.

The subject of our hearing this morning is H.R. 303, a bill that would permit concurrent receipt of military retirement pay and VA disability compensation. The bill was introduced by one of this subcommittee's most distinguished members, the Honorable Mike Bilirakis of Florida.

The bill as introduced would amend title 38 of the United States Code to allow concurrent payment of a VA service-connected disability compensation and full military retirement pay. Under current law, a military retiree must waive a portion of his or her retirement pay in order to receive the non-taxable disability compensation.

I agreed to hold this hearing at Mike's request, but I want to state up front that I have some reservations about several aspects of this bill, including its cost.

The Congressional Budget Office has estimated enactment of this bill would require budget authority in excess of $2 billion per year, with outlays of over $1 billion per year. In this regard, I asked the staff of the CBO to be here this morning to answer any questions that might arise regarding the basis for the estimate.

I indicated in my letter of invitation, as you know, a desire that witnesses address the issue of budgetary impact. Most of the statements I have seen indicate that since the major portion of the cost of this bill would ultimately be borne by the Department of Defense, the committee should not concern itself with the funding of this issue. This is not a responsible statement. Of course we do; therefore, the committee leadership does not agree.

For anyone who does not already know it, if the Committee on Veterans' Affairs were to report legislation of this nature that exceeds the allocation of new budget authority set forth in the budget resolution, it would necessarily have to also report an equal amount of savings to offset the cost, or be in violation of the Budget Act, not to mention the summit agreement in Gramm-Rudman.

It could possibly be subject to a point of order on the floor. The question would then be: Which programs do we, the Veterans' Affairs committee, cut? Is it medical, job training, disability or pension benefits, education, burial, counseling, or whatever programs. Certainly we could not recommend cuts in the Department of the Defense budget, so that leaves us no other choice but the Veterans' Administration program.

It seems, for the most part, that the bill's supports have been avoiding the issue—and it is an issue that will not go away, no matter how much it may be avoided.

Notwithstanding the concerns that I and others have, I feel that in view of the large number of co-sponsors who have signed on, and the number of letters that I have received, we ought to hear more about this bill.

I look forward with great interest to the testimony we will hear, especially with regard to the bill's impact on the budget and the deficit, and, of course, if the bill is overall fair and equitable.

[The prepared statement of Chairman Applegate appears on p. 57.]

Mr. **Applegate**. It is my understanding that Bob McEwen, the vice chairman of the committee, will not be in until somewhere around 10:00 a.m., and we will recognize him at that time.

We have presently two members of the subcommittee with us this morning, and first of all we will move over to the very distinguished chairman of the Subcommittee on Oversight, Mr. Lane Evans.

Mr. **Evans**. Thank you, Mr. Chairman. I really have no opening comments. I just look forward to hearing the witnesses. I appreciate your holding this.

Mr. **Applegate**. Thank you, Lane.

And then, of course, we have the sponsor of the bill, and our very distinguished Member from Florida, Mike Bilirakis.

OPENING STATEMENT OF HON. MICHAEL BILIRAKIS

Mr. **Bilirakis**. Thank you, Mr. Chairman. I thank you, and I know that the hundreds of thousands of disabled retired veterans thank you for holding this hearing on H.R. 303.

My opening remarks will be brief, since I will testify in support of this bill in the first panel, along with my distinguished colleague from New Mexico, Manuel Lujan.

We have, Mr. Chairman, before us a question of equity. Why must the retired veteran who served 20 years or more with great sacrifice forego his retirement pay in order to receive his VA disability? Because this dedicated individual chooses the military as a career, just like you or I choose our careers, he is prohibited from collecting his longevity retired pay and disability compensation for a service-connected injury or disease. Why is the disabled military retiree penalized for his faithful service, rather than rewarded?

I have tried to find some logic as to why this 19th century waiver requirement should remain intact, but to no avail. Disabled military retirees, who have lower life expectancy, lower retirement income, deserve their full retirement and their VA disability compensation.

Military retirees are the only group, Mr. Chairman, that must fund their disability from their retirement monies. And I might add, at this point, that we are showing all of the sudden great concern as to where the money is going to come from. I would say, Mr. Chairman, that during the six years that I have been here I think this is the first time I have heard that question raised. If we would raise that question every time pieces of legislation arise before this House of Representatives, I would wager we probably would not have the fiscal problems we have today.

It has always been my understanding that VA disability is paid to an individual regardless of length of service, regardless of outside income. Are disabled military retirees no longer considered veterans and deserving of VA disability? I should think not.

Any individual, a millionaire, the President, Members of Congress, private and government employees, if eligible can collect VA disability without regard to length of service or outside income. Why must, then, we ask the question? Why must the retired veteran fund his own disability simply because he chooses the military as his career?

H.R. 303 is a matter of equity—to treat military retirees in a fair and evenhanded manner.

Thank you again, Mr. Chairman, for this opportunity to truly discuss the merits of H.R. 303 in a public forum.

[The prepared statement of Congressman Bilirakis appears on p. 59.]

Mr. APPLEGATE. Thank you, Mr. Bilirakis.

You have all heard half of the first panel that is to be on this morning, and he will now be taking his seat at the table before us. And accompanying he is another very distinguished member of the United States House of Representatives, the Honorable Manuel "Manny" Lujan, a friend of the veterans, and a friend of all the Members, and a great Congressman, too. So I would recognize—Mike, are you going to start again?

Mr. BILIRAKIS. Whatever the counsel would prefer.

Mr. APPLEGATE. Well, no. The Chairman will yield to you.

Mr. BILIRAKIS. All right, sir. Thank you.

STATEMENT OF HON. MICHAEL BILIRAKIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. BILIRAKIS. Again, Mr. Chairman, I wish to extend my deep appreciation to you for your outstanding leadership, sir, and for your decision to schedule this hearing on H.R. 303 before this subcommittee upon which I am honored to serve.

As the sponsor of H.R. 303, I am requesting your assistance in this effort to eliminate the fundamental inequity in current law which requires military retirees to pay for their VA disability compensation out of their military retirement.

As you know, a 19th century law requires military retirees to waive dollar-for-dollar the amount of their military retirement equal to the amount of their VA disability compensation.

Career military retired veterans are the only group of Federal retirees who are required to waive their retirement pay in order to receive VA disability. I find this 19th century waiver requirement entirely inequitable because a military retiree is unjustly penalized by the fact that he chose the military service as his career. In effect, the military retiree is singled out solely because of his career choice.

It is deeply disturbing, sir, that this brave group of disabled retired veterans are the only group of Federal retirees who cannot collect their retirement for having served their country for 20 years or more, and also receive their VA disability for service-connected injury or disease, depending on their percentage of disability.

If the service member does not give up some or all of his military retirement, he forgoes disability benefits from the Veterans' Administration.

H.R. 303 has received widespread bipartisan support, as you know, from 220—now I understand it is 221, since we received an additional sponsor yesterday—of our colleagues. Senator Spark Matsunaga of Hawaii has just recently introduced the Senate counterpart, S. 2120, which currently has, as of a couple of days ago, eight co-sponsors.

My bill has been endorsed by seventeen veterans' organizations, including the American Legion, Disabled American Veterans, Veterans of Foreign Wars, Uniformed Services Disabled Retirees, Military Order of the Purple Heart, Non Commissioned Officers Association, Reserve Officers Association, Fleet Reserve Association, the Retired Enlisted Association, Catholic War Veterans, Air Force Sergeants Association, The Jewish War Veterans, National Military Family Association, National Association for Uniformed Services, AMVETS, The Retired Officers Association, and the American Retirees Association.

I am pleased to say that many of these dedicated groups are here this morning to speak of their support for the enactment of H.R. 303 and the elimination of the offset between military retired pay and VA disability.

This alliance of veterans' organizations, Mr. Chairman, and 220—now 221—Representatives in the House, assert that the statutory offset is an injustice to those veterans who have sustained a service-connected disability during their military career. And, Mr. Chairman, if we believe in the concept of a republic, then these 221 Representatives speak for far and away the majority of American people.

Given this overwhelming support in Congress and in the veterans community, Congress should be compelled, I think, to take action on this matter. It is my hope that this hearing will serve as the first step in that process.

At the conclusion of this morning's hearing I would like the committee to just remember one thing, and that is that H.R. 303 is simply a matter of equity. It is our duty, as Members of Congress, to eliminate inequitable laws such as the offset in current law. H.R. 303 will help us fulfill this duty and treat all Federal retirees in a fair and evenhanded manner.

Let me give you just a few examples of other Federal personnel receiving VA disability payments and retirement. For example, it is possible to have two Federal retirees with the same service-connected disability suffered in the same battle who have worked the same number of years in Federal service treated differently. The question is: Why? Because one served all his years in the military, and the other served only two years in the military and the remainder in civil service.

The military retiree must pay for his disability benefits from his retirement check. But the civil service retiree may receive both his civil service retirement and his VA disability, in spite of the fact that his military service is included in calculating his civil service retirement, and in spite of the fact that he had been receiving VA disability during all the years as a civil servant.

In another case two veterans could both be rated 100 percent service-connected disabled, and both receive the same amount of VA disability, even though one served for two years in the military and the other served for 20. The travesty in this situation is that the disabled career veteran has all or most of his or her retirement annuity offset by their VA disability compensation.

I am anxious that our subcommittee closely scrutinize this policy and the rationale for treating career military differently from the short-term veteran.

As I stated a few moments ago, an individual with only a few years of service can continue a career in private or government employment, and at the same time, receive VA disability compensation, and then apply the military service towards civil service and receive retirement pay concurrently with VA disability benefits.

Probably the most frustrating fact to me is that we had asked these brave men and women to serve during a time of need under tremendous duress and danger—and separations, I might add, from family—and yet the government fails to abide by its commitment to provide full military retirement.

How can we possibly expect to maintain a viable national defense if service members realize if they experience a service-connected disability they cannot receive VA disability and military retired pay?

Military personnel cannot protect themselves from loss of income through the purchase of private disability insurance or seek redress through legal action against the U.S. Government. The subcommittee should carefully review this matter with regard to the offsets affecting our nation's ability to recruit and retain qualified military career personnel.

As the sponsor of this legislation I have encountered many arguments from opponents, which I would like to briefly address.

With regard to the statement that my bill would enable retired veterans to double-dip, I contend that there would not be any duplication of benefits if H.R. 303 were enacted. My bill would not enable a retired disabled veteran to receive two payments for the same disability. Disability-compensation and DOD longevity pay are entirely separate programs with entirely different purposes.

Retirement pay is earned for 20 years or more of faithful service, and is an inducement to attract and retain qualified personnel to the military as a career.

VA disability compensation, on the other hand, was established to replace the loss of earnings attributable to a service-connected or service-aggravated injury of disease. Disability compensation also serves to compensate the disabled veteran for his reduced ability to compete for civilian employment, and we can't overlook that fact.

It is quite clear to me that DOD longevity pay and VA disability benefits are vastly different. The former relates to length of honorable service in the Armed Forces and the latter relates to disability and subsequent loss of earning potential.

Disabled military retirees often are solely dependent upon VA disability, as many cannot earn an income elsewhere. Statistics clearly indicate that disabled veterans have a much lower earning potential than the civilian force. Therefore, these servicemen, who, in the line of duty, became disabled, are singled out as the only group of Federal retirees who cannot collect both their retirement and VA disability. Again, why do we compensate the non-career veteran for disabilities and not those who have sacrificed and served their country the longest?

To clearly demonstrate the inequitable consequence of the offset, how can we justify why a service member who receives heroism pay as part of his retired pay for a Distinguished Service Cross, Silver Star, or Soldiers Medal must waive that heroism pay. In this instance, the soldier who has received an award for an extraordinary act of heroism is stripped of his recognition, and must also fund his disability out of this award.

And, conversely, the veteran who receives dependency allowance and aid and attendance allowance as part of his VA disability must waive dollar-for-dollar his military retirement. Remember how pleased, Mr. Chairman, we all were that we were able to provide a cost-of-living increase to recipients of VA disability? Well, the actual impact of Congress' action was to increase the amount of military retirement that the disabled retired veteran must waive each month in order to receive his VA disability.

I am convinced that there is no sound policy for not allowing retired career military to collect their retirement pay and their VA disability compensation. The cost associated with H.R. 303 is perhaps the only logical impediment toward enactment. Cost estimates, as you indicated, Mr. Chairman, have been varied from $2 billion to $900 million. Before us this morning, DOD will estimate a cost of a minimum of $1.2 billion to a maximum of $1.7 billion per year.

I must admit that the process of obtaining accurate data on the cost of H.R. 303 and the actual number of affected retired veterans has been frustrating, at best. The differing figures that I have received from the Department of Defense, from the Veterans' Administration, and from the Congressional Budget Office all differ. How can opponents possibly shoot down this equitable proposal when accurate cost figures are not available?

In addition, none of the cost estimates have incorporated the return to the U.S. Treasury resulting from the fact that military retirement is fully taxable.

I am submitting what I view as a rather conservative estimate from the Joint Committee on Taxation, which concludes that $100 million would be returned in income tax to the Treasury if H.R. 303 were enacted.

The Congressional Budget Office will not provide figures on the return to the Treasury. Perhaps the CBO representative here this morning will be able to explain why these figures cannot be made available, as I have requested. In general, approximately 20 to 30 percent, I think, would be returned as taxable income.

In closing, I wish to outline the situation of a 100 percent disabled veteran of three wars—World War II, the Korean Conflict, and Vietnam. I met this gentleman in New Mexico last year.

In addition to this three periods of service, Colonel James Lindberg Hughes, of the U.S. Air Force, was a prisoner of war for six years in "Hanoi Hilton" during the Vietnam Conflict. Colonel Hughes served this nation in the most honorable terms for 25 years and 2 months. How can we justify the fact that Colonel Hughes must waive 60 percent of his military retirement in order to receive VA disability for service-connected disabilities incurred during his service in three wars and having been a former prisoner of war?

I saw him, Mr. Chairman, and I don't think this individual can really get out there and compete with you and me as far as the job force is concerned.

That, to me, Is unconscionable.

There are countless other distinguished retired veterans who must also fund their VA disability from their military retirement. The present law is unjust, unrealistic, and simply does not adequately compensate those brave service members who have defended our nation.

Mr. Chairman, I thank you, again, for your assistance and your leadership. This is, indeed, a momentous event for the hundreds of thousands of retired veterans affected by this discriminatory law, and I thank you for your decision to hold a hearing on this vital issue.

Again, I look forward to working with you on H.R. 303, and urge your consideration on some agreement on this matter so that retired veterans who should be rewarded, rather than penalized, for having served their country for 20-plus years. They ought to be able to receive the compensation they have earned.

Mr. Chairman, I appreciate your indulgence in allowing me to extend my time.

Thank you very much.

[The prepared statement of Congressman Bilirakis appears on p. 59.]

Mr. **Applegate**. Thank you very much, Mike.

Might I ask: Do you have an estimate or a letter or something from the Joint Committee on Taxation for the record?

Mr. **Bilirakis**. Yes, we do. We'll submit that for the record.

Mr. **Applegate**. Thank you.

[The information appears on p. 68.]

Mr. **Applegate**. Next I will introduce the very Honorable Manny Lujan from the great State of New Mexico.

STATEMENT OF HON. MANUEL LUJAN, JR. A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Mr. **Lujan**. Thank you very much, Mr. Chairman. And thank you for holding this hearing on H.R. 303, legislation that is very important to our veterans. I appreciate the opportunity to join my colleague here today in support of this much needed measure.

Mr. Chairman, this legislation introduced by my good friend, Mike Bilirakis, addresses a serious inequity in our laws where disability compensation is concerned. I think, Mr. Chairman, that there must be some misunderstanding where the term "disability compensation" comes from.

Military retirees are forced to waive a portion of their retirement, which they have earned for length of career service, simply to receive the VA disability compensation, which is intended to compensate them for injuries they sustained as military personnel. I can't think of a better example, Mr. Chairman, of mixing apples and oranges than this. We are using service-connected disability compensation to double as retirement compensation—two different things.

Then, Mr. Chairman, we don't even apply this policy consistently. A military retiree must choose between his disability compensation and his military retirement in that amount. Yet, this theory does not apply to a non-military government retiree who also qualifies for a disability compensation which might stem from a war wound or other service-connected disability. Mr. Chairman, I don't think it is fair, and I can't believe that is really what was intended. It just worked out that way.

For this reason, I would like to see this matter addressed in this Congress. There is broad support in this House for correcting this unfair provision in the law that discriminates against military personnel who have suffered a disability in the service of their country. I believe that we have a responsibility to correct this wrong. As Mr. Bilirakis has mentioned, there are 221 of us now that have sponsored this legislation because we can see the inequity.

Now, Mr. Chairman, in your letter of invitation to this hearing you requested that witnesses like myself suggest veteran programs to be cut to allow these folks to receive their military retirement. There are three things, I believe, that we must look at.

First, it is my understanding that the retirement funds in question come entirely out of the Department of Defense retirement account, so I cannot understand how it is that we must cut some veteran programs. Certainly the Department of Defense must accommodate for them.

Secondly, the estimates which are given as to cost vary from very high to very low, and no taxes paid on these amounts are taken into consideration, as the gentleman mentioned.

But finally, and probably most important, is the fairness question, that we ask the disabled veteran to do something that we don't ask someone else do to.

In closing, Mr. Chairman, it is my hope that H.R. 303 is given the consideration it deserves in this Congress. No doubt this committee will hear much emotional and compelling testimony today setting out for you the impact this provision in our law has on the affected veteran.

Ironically, Mr. Chairman, this is one situation where the inconsistency in our law and its results are compelling enough to stand alone as an argument for addressing this wrong.

Mr. Chairman, again I appreciate your subcommittee holding this hearing today on H.R. 303, for until the Congress changes this law we are perpetuating the unfairness in our treatment of those who served us and suffered for it.

Thank you very much, Mr. Chairman.

[The prepared statement of Congressman Lujan appears on p. 69.]

Mr. APPLEGATE. Thank you very much, Manny and Mike.

Let me just throw this out—just one quick question that I'm trying to figure out. The bill will not allow that a person will stay in the service, receive military pay, and collect a disability pension?

Mr. LUJAN. That's correct.

Mr. APPLEGATE. The minimum time that it takes to get a retirement is 20 years?

Mr. LUJAN. Right.

Mr. APPLEGATE. At what point does a person get his service-connected disability—

Mr. LUJAN. When he gets—

Mr. APPLEGATE [Continuing]. Whereupon he can stay in the service? When is that—

Mr. BILIRAKIS. At no point—my understanding is that at no point, while a person remains in the military before they retire or resign from the military do they receive VA compensation. That only comes forth after they have retired, or have gotten out of the military, make application, go through the entire process, which, as you know, is not always an easy one, and then possible receive a certain percentage.

Mr. LUJAN. Probably one short explanation, Mr. Chairman: Until that person leaves the military he is not a veteran, so he is not entitled to a veterans benefit.

Mr. BILIRAKIS. And, Mr. Chairman, the paradox of it all is that the person who gets out and does not serve his time out of patriotism and what not—separations, and everything of that nature—and either goes into the private labor force or goes with civil service, they have applied immediately at that point. They don't have to wait 20 years. They apply immediately at that point for their VA disability and receive that VA disability while they are making this much bigger money on the outside as compared to all the separations and the duress and everything else that goes along with military service. I think that is an important point. When we talk about unfairness, how can we overlook that fact?

Mr. APPLEGATE. Well, I'm trying to think of it, a person was in the service in 1967 and 1968, he was injured in some way, which would be service-connected, but he stays in for his 20 years—

Mr. **Bilirakis**. Yes. He does not receive the VA disability during that time—or any disability.

Mr. **Applegate**. Not during that time, but after he retires at the end of the 20-year period—

Mr. **Bilirakis**. Yes.

Mr. **Applegate** [Continuing]. Does he then go back and pick up his disability?

Mr. **Bilirakis**. On a retroactive basis?

Mr. **Applegate**. Are you presumed to be disabled after the 20 years?

Mr. **Bilirakis**. Well, after the 20 years is when he makes application, and he has got to go through the entire process of physical examinations, when, obviously, the records that are built up during the time that that person is in the service—going back to when that disability occurred—are key. So, if you will, the facts in the medical records are determined at the time the disability takes place. We have had a problem with some of them. In the fire in St. Louis a few years ago, an awful lot of those records were destroyed, and an awful lot of these people who maintain that they actually received a service-connected disability, at one time, had their records destroyed and they're having to go back and reconstruct, and it has been a pretty difficult chore.

Mr. **Applegate**. Okay.

Mr. McEwen, did you have anything you would like to say to these gentlemen?

Mr. **McEwen**. Mr. Chairman, if you don't mind I would like to insert my statement. I'd like to read it, if I may. It will only take a moment.

Mr. **Applegate**. Mr. Bilirakis?

Mr. **Bilirakis**. May we be excused, Mr. Chairman?

Mr. **Applegate**. He would like to address this to you.

Mr. **Bilirakis**. Okay. Great.

OPENING STATEMENT OF HON. BOB McEWEN

Mr. **McEwen**. Michael, you're the main reason I want to say this, because this bill has your name firmly embossed upon it, and you are the one that brought it to the attention of this committee with such vigor, and you are the reason that my name is listed as a co-sponsor.

It is a bill that has wide-spread support among veterans organizations and organizations representing many active and retired military personnel. As you are fully aware, it has firm opposition by the Veterans' Administration and by the Defense establishment.

The subject of dual retirement pay from the military and compensation from the VA is one of long-standing.

Today we are exploring, in-depth, what I believe is the first House of Representatives hearing on this specific matter, for which you have spoken out so boldly for so long.

Our witnesses will go into the pros and cons, and the net result will be better understanding on the part of all of us on this complex issue.

Mr. Chairman, with equal fervor we will hear today that this is a matter of principle. Both those in favor of H.R. 303 and those opposed to it will say this. We will hear that the bill is very costly, and it is. Some have placed a price tag on it of some $2 billion a year. But we will also hear that the cost should not deter favorable action because we are dealing with a matter of equity and fairness.

We will hear that a retired civil servant can receive retired pay and VA compensation at the same time. Others will say that, while this is true, it is also true that the civil servant paid into a retirement fund, while a service person did not.

Well, that argument, then, is countered by the statement that for many years military pay was low compared to civilian salaries and future favorable retirement was considered a part of their salary.

Mr. Chairman, we will also hear that this appears to be an issue that only relates to those covered by H.R. 303. In rebuttal we will be reminded that a Government employee, at the time of retirement, cannot receive that retirement and at the same time receive workman's compensation for an injury on the job.

And so, Mr. Chairman, it will be point and counter-point. But we will be better able to make a judgment when we hear from all the witnesses.

My interest in speaking out at this time is to say that both our friend from New Mexico, as well as our member of this panel from Florida, have deep and abiding concern about the fairness and equity involved in this.

I hope that all of us can come to a conclusion which is recognized as fair to all Americans, as well as fair to all veterans.

I thank you both.

[The statement of Congressman McEwen appears on p. 70.]

Mr. APPLEGATE. Thank you very much, Mr McEwen. And thank you very much Manny and Mike, for appearing before the committee. I appreciate that very much.

Let's have the next panel; Lt. Gen. Tony Lukeman of the U.S. Marine Corps and Mr. R. J. Vogel, Chief Benefits Director of the Veterans' Administration, if they would come up to the table.

Before we recognize them I would remind the witnesses that because of the largeness of the witness list and somewhat restrictive time that we will adhere to the five-minute rule for both witnesses and members of the subcommittee. Therefore, your full written testimony will be made a part of the record. We certainly would appreciate everybody recognizing that as best as they can.

So, gentlemen, if you drew straws—John, you're an old hand here, so I'll let you choose between the two of you who you want to go first.

STATEMENT OF R. J. VOGEL, CHIEF BENEFITS DIRECTOR, VETERANS' ADMINISTRATION

Mr. VOGEL. Thank you very much, Mr. Chairman. As an old-hand here—left-handed compliment, for sure, but I'll accept it in the spirit in which it was offered.

Mr. Chairman and members of the committee, I am pleased to be here today to present the views of the Veterans' Administration on H.R. 303, a bill to amend section 3104, title 38, U.S. Code, to permit certain service-connected disabled veterans who are retired members of the Armed Forces to receive compensation concurrently with retired pay without deduction from either.

For the reasons that follow, the VA opposes enactment of H.R. 303.

Section 3104(a)(1) of title 38 prohibits, among other things, the award of VA disability compensation concurrently with military retired pay, except to the extent that the latter is waived under other provisions of the law. Waiver is authorized by section 3105 and permits a retired service member to waive any or all retirement pay to receive, instead, an equal amount of VA benefits.

Waiver is often advantageous to the veteran because VA benefits, unlike military retirement, are not subject to income tax.

H.R. 303 would, if enacted, remove the bar against concurrent payments, except to the extent that 3104(a)(1) would, as amended, proscribe concurrent payment of these benefits based on the same disability.

A prohibition against dual awards has existed since 1891 when a statute prohibited payment of pensions to persons of the active and reserve lists of the Armed Forces. Pensions were that era's equivalent of modern disability compensation.

The present proscription, contained in section 3104 has, as it affects disability compensation, stood in the law relatively unchanged since its codification in 1958.

Since then, Congress has considered numerous identical or similar-purpose bills that would overcome the concurrent prohibitions against payment of disability compensation concurrently with military retirement benefits. Thus far, Congress has declined to permit such pyramiding of benefits based upon the same period of service.

Proponents have made comparisons between military retirees entitled to veterans' compensation because of disabilities incurred during their military service and civil service retirees similarly entitled to veterans' compensation for service-connected disability. They point out that a civilian employee who has applied military service as a credit toward civil service retirement can draw longevity- and age-based civil service retirement and VA compensation at the same time based on the same period of service.

Thus, they conclude that a veteran entitled to longevity-based military retirement and VA compensation arising out of a period of service credited towards military retirement should, as a matter of principle, be entitled to draw both benefits concurrently.

We believe such comparisons to be misleading. If a person is eligible for a civil service retirement annuity based on age and longevity, that person cannot concurrently with such payments receive a civil service retirement annuity based on disability. The same holds true for social security benefits.

We doubt anyone would suggest payment of concurrent disability-based and longevity-based civil service retirement benefits or such combination of social security benefits. Neither would one argue that a person should be paid full longevity-based military retirement pay and disability-based military retirement concurrently.

Workers' compensation benefits which compensate U.S. civil servants for disability derived from employment are subject to the following analogous dual-benefits proscription: A person may not concurrently receive compensation pursuant to the worker's compensation act, and a retirement or survivor annuity from OPM. Such a beneficiary may elect to receive the more advantageous benefit, but cannot receive both.

While it is true that a government employee may receive workers' compensation concurrently with military retirement pay, under the applicable law and implementing regulation there is, in such cases, no connection between the military service for which military retirement is paid and the civilian service out of which the workers' compensation arose.

The same may not be said, however, as to workers' compensation and civil service retirement; both benefits arise out of the same service.

Compensation is a benefit based on the circumstances of a veteran's military service, just as is military retirement pay. To permit the adding of VA compensation payments to the longevity-based military retirement payments for the same service would be equivalent to permitting dual payments of longevity-based and disability-based military retirement. Thus, the law appropriately requires waiver of one to receive the other.

This issue was thoroughly addressed in the Federal courts in Absher v. United States. In that case the Claims Court held, in response to plaintiffs' assertion that section 3104 unconstitutionally denies them equal protection of the law, that the circumstances of military retirees and civilian retirees are very different. The court cited special benefits accorded retirees—commissary, post exchange, recreational, travel, and health care privileges, plus eligibility to retire after only 20 years of service, regardless of age, without making financial contributions to a retirement fund—which are not now available to other Federal retirees.

In that decision, summed up by stating "The balance Congress has struck is not only rational, but also bears a demonstrably fair and substantial relation to legitimate legislative objectives, and does so without denying equal protection."

Mr. Chairman, that concludes my statement. I would be pleased to answer any questions you or members of the committee may have.

[The prepared statement of Mr. Vogel appears on p. 72.]

Mr. **Applegate**. General Lukeman?

STATEMENT OF LT. GEN. ANTHONY LUKEMAN, U.S. MARINE CORPS, DEPUTY ASSISTANT SECRETARY OF DEFENSE, MILITARY MANPOWER AND PERSONNEL POLICY, DEPARTMENT OF DEFENSE

General **Lukeman**. Mr. Chairman, the Department of Defense and Veterans' Administration are both of a like mind on this particular bill, so perhaps in the interest of time and courtesy to the other witnesses I'll forego a formal statement and would request that my statement be entered into the record.

[The prepared statement of General Lukeman appears on p. 79.]

Mr. **Applegate**. All right. Thank you very much for that.

Of course, you each represent two different agencies, the Veterans' Administration and DOD, but if the committee were to pass this legislation out, and then you have to divide the cost between the Department of Defense and the Veterans' Administration, are there any suggestions that you would have how that would be accomplished—where there might be cuts—knowing that we have budgetary constraints? We have agreements under which we are supposed to work.

Mr. **Vogel**. I'll take a shot at that, Mr. Chairman. The VA cannot identify—we don't have the resources or the data available to identify clearly the cost, so we would defer to the Department of Defense on that. But for the sake of—if the cost would be $2 billion per year, and it was incumbent upon the Veterans' Administration to identify that $2 billion somewhere else in the VA programs, we would begin, probably, with leaving most of the entitlement programs alone, but maybe changing the nature of the definition of eligibility in some of those areas with respect to compensation, direct performance of military duty, and that sort of thing.

We could come up with a number of alternatives where the dollars may come from and would provide it to this body for their consideration.

Mr. **Applegate**. General?

General **Lukeman**. Clearly, sir, under current law the cost would be to the Department of Defense. Whatever offsets would be required would be done in the normal way. We would look at the whole range of operational and procurement and modernization and research programs and personnel programs, and then probably decrease in the most sensible way that we possible could as a matter of balance.

Mr. **Applegate**. Thank you very much.

Mr. McEwen?

Mr. **McEwen**. Thank you, Mr. Chairman. I do have some questions, but I would like to follow Mr. Bilirakis.

Mr. **Applegate**. Okay. Mr. Bilirakis?

Mr. **Bilirakis**. Thank you, Mr. Chairman. There is just so much.

Mr. Vogel, I've known you for six years now, and have always thought an awful lot of you. We've gotten along well together, and you have always been very cooperative. I guess I raise the question, first: Why is the Veterans' Administration—now, we know all about title 38, we know about the section you referred to and what not. That's what this is all about. We're talking about legislation that would change that.

So that, in itself, is not a reason to oppose this legislation. What we're talking about is changing that. So quoting that and expanding upon it—we know about the civil servants and that sort of thing. We know all about all that—workman's compensation—I don't think you're comparing apples with apples in any way whatsoever. Anybody who would compare a person on civil service or on private employment with a person who has spent the best part of his or her life in the military, I think they're just whistling "Dixie," and I think that's really what this is all about, sir.

But I guess I would ask the first question: Why is the Veterans' Administration opposing this legislation? After all, the Veterans' Administration should support veterans. This is not intended to adversely affect the monies going to the VA. You know I have supported veterans programs all along—even as against the recommendations of the VA—insofar as the VA budget is concerned. So I would never be a part of reducing dollars going to the VA and this question that was raised about what veterans benefits would you forego, would you cut, and what-not if this were passed, I don't think that even has anything to do with this piece of legislation and this hearing here today.

Why is the VA opposing this?

Mr. VOGEL. The VA is not opposing this out of sensitivity to the cost. This committee and the United States Congress have certainly given America's veterans wonderful recognition and support—and you, yourself, Mr. Bilirakis, are known, clearly, as a very, very staunch supporter of the VA programs and the VA budgets.

The basic difficulty the agency has with it is the payment based on the same period of service, and that is—the long and short of it—payment of both those benefits on the same period of military service.

I'd like to point out that if an individual was on the disability retirement roles, this law would be inequitable for them. If he retired on disability from the military, or received severance pay from the military, if there is, indeed, an inequity—I'll concede that point—those former military members would not be afforded what longevity-based retirees—

Mr. BILIRAKIS. Because they haven't served that 20-plus years in the military, right? Because they could get out into the work force and make $90,000 as a Member of Congress or go out and start a business or whatever the case may be and still continue to receive that DOD disability.

Mr. VOGEL. A member of—

Mr. BILIRAKIS. And it's a pretty handsome disability, as a matter of fact. I'm not, for one moment, saying it is adequate. But it is pretty handsome.

Mr. VOGEL. A member of the Armed Forces retired on disability—permanent disability retirement—would not be affected by this bill. Some of those, I might submit, are rather disabled.

Mr. BILIRAKIS. Well, but don't you see what I'm saying? That particular person gets out with that DOD disability and receives it all along, and then can join the civil service and make the money which is considerably better than his cohort who was injured in that same battle who stays in the military.

And I would say, again, that this civil service person that you refer to in your remarks is receiving his disability during all that interim period of time; is he not?

Mr. VOGEL. That's right. That's correct, sir.

Mr. BILIRAKIS. Well, but, again, you're going on that technicality, if you will. It is sort of like we want to oppose something, and we are picking a particular point, and that particular point is that it comes from that same time of service. We're completely overlooking the fact that this person was injured as a result of that same period of service.

General Lukeman, you're still active?

General LUKEMAN. Yes, sir.

Mr. BILIRAKIS. Still active duty. Sir, DOD is opposing this, not because of title 38, I hope. Why are they opposing this? Because they don't want a reduction in the $300 billion approximately that Congress gives DOD every year?

General LUKEMAN. No, sir. The primary reason why we're opposing it is that we believe we have an adequately integrated system now that is based around the VA benefit.

We certainly agree that the VA ought to pay the benefits for disability that it does, and then if the entitlement from military service is greater, then that's what would go to the individual.

The second reason is that this is normal for retirement systems, both in public and private sector. And so we think that it would be inappropriate to pay duplicate benefits.

Mr. BILIRAKIS. So we keep going again to picking out rationale as to why we should oppose something.

I don't know. The red light is on, Mr. Chairman. Will I have another opportunity?

Mr. APPLEGATE. Go ahead.

Mr. BILIRAKIS. Thank you.

General Lukeman, how much is currently in the Military Retirement Trust Fund?

General LUKEMAN. Let me see if I have that in my records here, sir.

Mr. Amis tells me that the figure in the trust fund at this time is about $40 billion, Mr. Bilirakis.

Mr. BILIRAKIS. Now, when is the contribution made into the trust fund by DOD? Is it made after a person has retired? Or does that contribution start to be made during the time that a person is in the service and appears to be heading towards a career in the military?

General LUKEMAN. There are three different sources of funding for the Military Retirement Fund. One is based upon a normal cost percentage. It is an actuarial valuation of what it will cost in the long run for members who are presently serving. That is part of the DOD budget, and goes annually into the Military Retirement Fund.

The second source of income is for amortizing the unfunded liability. We have been on this system only a few years, so there is an unfunded liability for people who are already retired, and that comes out of general revenues transferred annually into the Military Retirement Fund.

And then—

Mr. BILIRAKIS. It comes out of general revenues?

General LUKEMAN. Yes, sir.

Mr. BILIRAKIS. You mean as a part of the appropriation every year to DOD?

General LUKEMAN. The unfunded liability costs are covered by continuing appropriations authority, and the normal cost for the current force is covered by annual DOD appropriations.

And then the third source of income is interest on the funds that are in the Military Retirement Fund, itself.

Mr. BILIRAKIS. All right. But at what point—let's say I have reenlisted for a second term, so I am now starting—well, if it is the Air Force I am starting my second four years, if it's the Army it could be my second three years, whatever—but at what point does the Military Retirement Trust Fund start to accumulate for me on the assumption that I'm going to put in 20-plus years?

General LUKEMAN. It will make an assumption as to how many of us will eventually retire based upon the size of today's force and what our present grade is and what the expectation is for our retirement. Each year, looking at that whole force, we estimate what the future pay-out will be for all of us now serving.

So the whole force gets a contribution to the Military Retirement Fund each year based on actuarial assumptions as to who will retire.

Mr. BILIRAKIS. All right. Now, is that adjusted based on actual figures showing to the contrary?

General LUKEMAN. One of the major adjustments that goes into that calculation is people who will not eventually receive all of their retired pay.

There are six different conditions that I am aware of that go into this assumption. One is the payment that we're talking about now from the Veterans' Administration. The actuaries will make an estimate based on past experience in all of these areas, including how many people will eventually draw disability retired pay from the Veterans' Administration.

The second reduction comes as a result of an estimate of those people who will go to work for the Federal civil service and will give up part of their retired pay as a result of the dual compensation laws.

The third offset comes as a matter of the survivor benefit payment, where the military retired pay is reduced as a result of a survivor benefit payment the individual has taken an option on.

The fourth is to account for military retirees who eventually will go to the Veterans' Administration and have a medical finding that a disability exists, and we anticipate what that will be.

The fifth, believe it or not, is that some people actually give up their whole retired pay—and I'm not quite sure why, but there is an actuarial assumption for that.

And then, finally, there are some people that eventually will elect to get full civil service retired pay rather than military retired pay, and so the assumption is also made as to how much that will be also.

So what happens, in effect, is that what goes into the retirement fund is going to be sufficient, with interest, to pay what has to go out of it in the long run.

Mr. BILIRAKIS. You'd never reach the point where you consider that there might be a surplus in there as a result of actual history?

General LUKEMAN. They do look at it every year, sir, and take into consideration the history of the last year. It is one of these rolling type things where the history is updated every year.

Mr. BILIRAKIS. Let me ask you, sir: On page five of your statement you estimate that there are 289,595 military retirees who retired with 20 or more years of service. Are you with me on that, sir?

General LUKEMAN. Yes, sir.

Mr. BILIRAKIS. Okay. And you state that a total of $762 million is waived annually by this same group of military retirees who retired for longevity; right?

General LUKEMAN. Yes, sir.

Mr. Bilirakis. All right. How is it possible, then I ask you, to estimate a price tag for H.R. 303 that is three times that amount? As you know, the price tag—well, one of the price tags that we've heard is $2 billion, and since then it has sort of come down, depending on who you hear. But how is it possible to estimate a price tag three times that amount that is currently being waived when H.R. 303 only will affect that group of retired disabled veterans who served 20 years or more, and not the military retiree who retired for military disability? Do you have an explanation for that?

General Lukeman. I'll give my best, sir.

Mr. Bilirakis. All right, sir.

General Lukeman. I talked with the DOD actuary yesterday on this matter, Mrs. Hustead, and she told me that only with very great difficulty were they able to come up with a range of estimates from about $1 billion to $2 billion, which is a big range, as you have pointed out.

In order to make an estimate that they would have been truly satisfied with, we would have had to have gone into all the paper records to determine the cause of each disability, since, as you well know sir, with your bill, where the disability is the same there would be a waiver, but where it isn't the same—

Mr. Bilirakis. But you all have specific figures of $762 million; isn't that correct? Why isn't that figure the logical figure, the actual figure?

General Lukeman. What we would have to do is to determine which actual disabilities were the same so that we knew that we would waive retired pay in those cases; and which disabilities were not the same so that there wouldn't be a waiver. We weren't able to do that; and so what the actuary did was take a range of estimates based on entirely other information.

Mr. Bilirakis. All right. But, sir—and, Mr. Chairman, I really appreciate your giving me the time—you state that a total—T-O-T-A-L, if that's the way it is spelled—of $762 million is waived annually by this same group—"this same group" referring to the 289,595 military retirees—by this same group of military retirees who retired for longevity. So that is a total amount, apparently, that is waived.

Only a portion—you said that there are six reasons why waiver takes place. So we would say that only a portion of that $762 million is waived as a result of VA disability; isn't that correct? One of the six reasons.

General Lukeman. I understand what you're saying, sir. If I may, I would like to not cross swords with the Congressional Budget Office on the matter of costing. I feel that they are probably better able than I am to answer your question accurately.

I can tell you the basis for the range of estimates that the Department of Defense made. But you are now asking me the kind of question that I can't answer properly.

Mr. Bilirakis. Well, Mr. Chairman, I know that at your request CBO is here. They are not listed as witnesses. Would this be a good time to request some sort of an explanation from them?

Mr. Applegate. Yes, that's why we have them here. Please come forward and see if you can give Mr. Bilirakis an answer.

Mr. **Bilirakis**. Well, I would like to say give the entire Congress of the United States and the American people an answer. Thank you, sir.

Mr. **Applegate**. And, if you ladies would, would you please identify yourself for the record?

Ms. **Shepherd**. I'm Nina Shepherd.

Ms. **Hollinshead**. And I'm Barbara Hollinshead.

Ms. **Plapp**. I'm Amy Plapp. And we're all from CBO.

Mr. **Applegate**. Thank you.

Ms. **Hollinshead**. Your question was how we know how our $700-some-odd million is offset each year from the—

Mr. **Bilirakis**. Yes. CBO has placed a price tag— and I guess maybe their figures are varied, but the $2 billion dollar figure that had been thrown out early in the game is the figure that Congress seems to have attached their hooks to and keeps talking about.

Then you have heard testimony here that there is a total of $762 million waived annually—

Ms. **Hollinshead**. Each year.

Mr. **Bilirakis** [Continuing]. And that apparently is the result of a waiver for all six—

Ms. **Hollinshead**. No. That's from the VA. That's just from the VA disability waiver.

Mr. **Bilirakis**. That's—

Ms. **Hollinshead**. The actuaries collect information on how much money is waived because of VA disabilities.

Mr. **Bilirakis**. Okay.

Ms. **Hollinshead**. I think that that's the amount.

Now, the $2 billion—I think that something that has been a little bit confusing for people is how the trust fund and the accrual accounting system work, because the $2 billion that we estimated is in budget authority paid into the trust fund every year. As General Lukeman has already explained, there are three sources of that budget authority to the trust fund, and one is based on the service of people right now who are on active duty. Our government contributes every year from the Department of Defense toward their retirement, and the amount contributed is based on the assumption of the actuaries and the normal cost percentage and how many people are on active duty, et cetera.

Mr. **Bilirakis**. Okay. That's $2 billion—

Ms. **Hollinshead**. No. That's about $900 million, or very close to it. That's half of that $2 billion. The other half is for the unfunded liability payment, which, if you change the rule now so that people can collect for their retirement both from length of service and for their disability, would require you to go back and re-evaluate the added retirement costs accrued before accrual accounting began—on October 1, 1983—go back and say, "Well, gee, we now have to pay more for each of those people for their service that took place before accrual accounting started." So we'd have to contribute more to the trust fund to take care of their future benefits. That unfunded liability payment will be larger, as well.

Mr. **Bilirakis**. How does that reconcile with the $762 million figure that statistics tell us—

Ms. **Hollinshead**. What it—

Mr. **Bilirakis** [Continuing]. Is actually waived as a result of VA disability?

Ms. **Hollinshead**. Okay. What happens is that the trust fund is getting income that will pay for the benefits of people later. People have described it as like an IRA. You're putting in money now to pay for people who are retired and will retire.

Mr. **Bilirakis**. But is that taking into consideration the fact that—

Ms. **Hollinshead**. Yes.

Mr. **Bilirakis**. That's total?

Ms. **Hollinshead**. It takes into consideration everything. The estimated additional outlays from the trust fund as a result of this legislation, which the CBO has stated were around $1.1 billion on up in the future years, are what are actually paid people now. That $700-some-odd million of money that the people must forego now was the basis of that estimate. We took that amount and increased it for the average increase in those offsets, plus COLA assumptions, and things like that. And that's where the estimate for outlays from the trust fund comes from.

I think probably the biggest confusion is between the outlays the government actually must spend and the budget authority contributions to the trust fund. The total outlays of the Federal Government will be bigger by between CBO's estimate of $1.1 billion and the maximum estimates of the actuaries at DOD, say $1.5 billion, depending on how you rate disabilities.

But in the meantime we have to contribute to the trust fund to pay for the future costs of people who are currently on active duty. These contributions would be approximately $2 billion larger if this legislation were passed.

Mr. **Bilirakis**. But what is that contribution? Is that contribution on the basis of the total number anticipated military retirees? Total number, right? Not knowing how many of them might turn out to waive?

Ms. **Hollinshead**. Well, if you pass this legislation, no one would waive. They wouldn't have to waive.

Mr. **Bilirakis**. That's right.

Ms. **Hollinshead**. So—

Mr. **Bilirakis**. But you're saying that now—what is now the budget authority? Is it $2 billion or $1.1 billion?

Ms. **Hollinshead**. The budget authority, as was very clearly stated in the cost estimate, is about $2 billion a year bigger in the trust fund.

Mr. **Bilirakis**. But the outlays are $1.1 billion?

Ms. **Hollinshead**. Correct. And that's also very clearly stated.

Mr. **Bilirakis**. And that's the actual money, isn't it?

Ms. **Hollinshead**. That's the actual—

Mr. **Bilirakis**. Outlays is money.

Ms. **Hollinshead**. That's the actual money that we pay to the retirees. Yes.

Mr. **Bilirakis**. And that is actual money that is paid out to retirees?

Ms. **Hollinshead**. Correct. Accrual accounting is very complicated.

Mr. **Bilirakis**. Any accounting is.

Ms. HOLLINSHEAD. Yes.

Mr. BILIRAKIS. Well, no reflection on you and your explanation—please don't take it that way—but it is still something that I don't understand. I heard Mr. McEwen say the same thing up here.

I guess we can take hours at this. I am disappointed.

Let me ask you, General, what is the average income? Do we know? I like to think we care a little bit after our guys and girls have put in their 20-plus years and they retire. Do we keep figures to give us an idea of the average income of an enlisted retiree? What is the average income of an enlisted retiree?

General LUKEMAN. We do keep figures on what his average retirement would be, Mr. Bilirakis. I do not think that we keep figures—at least recent ones—on what his total income would be, including—

Mr. BILIRAKIS. In other words, if he is able to work on the outside? What is the average income, as far as their retirement income is concerned? Approximately.

General LUKEMAN. I can give you an approximation. A person retiring in pay grade E–7, with a current total active duty pay of about $30,000 a year, would retire at about 50 percent of the basic pay part of that, so his retired pay would be—

Mr. BILIRAKIS. The average income—I'm going to go back in the military.

[Laughter.]

General LUKEMAN. The typical retired E–7, which includes those already retired, receives about $800 a month in retirement pay.

Mr. BILIRAKIS. The $800 is retirement pay?

General LUKEMAN. Right—retirement pay.

Mr. BILIRAKIS. All right. So that $800 times 12 is $9,600—below $10,000. That's around poverty level; is it not?

General LUKEMAN. Very close. Yes, sir.

Mr. BILIRAKIS. Very close.

Well, Mr. Chairman, I would like to submit for the record a number of questions to Mr. Vogel and General Lukeman, and based on what is appropriate, we would need answers within a reasonable amount of time.

[The information appears on p. 161.]

Mr. BILIRAKIS. In closing, I would say that I am terribly disappointed that both DOD and the VA are opposing this equitable piece of legislation. I should think that we should be trying to do the right thing in this business and try to bend a little bit and find ways to satisfy equity, if you will, rather than just out and out opposing something because title 38 says so.

Thank you very much, Mr. Chairman.

Mr. APPLEGATE. Thank you, Mr. Bilirakis.

I'm sure the CBO will certainly be available to answer any of the questions that you have to submit to them, too.

Counsel has a question they would like to ask.

Mr. BRIZZI. I'd like to direct this, please, to General Lukeman and the staff from CBO, if you could either or both respond. Does the estimate of the cost of H.R. 303 include those retired members who do not choose to waive any retired pay? That's question one.

Does it include those who do not file for compensation at any point, although they may be disabled, because they know, under current law, that they cannot receive both benefits concurrently?

And, finally, does it include those disability retirees who have other disabilities which did not form the basis for their military disability retirement?

If anybody wants me to repeat any portion of that, I will.

Ms. HOLLINSHEAD. Do you want to go first?

General LUKEMAN. I can answer generally that the actuaries, based upon what the experience of military retirees has been in the past, will estimate for the future how much has to be put into the fund to pay what the Department of Defense's costs will be. For all of the waivers—all of those individuals who, for whatever reason, will not receive retired pay from the Department of Defense—an estimate is made, and that amount of money is not put into the fund.

Mr. BRIZZI. CBO?

Ms. SHEPHERD. Yes. The CBO estimate contains $17 million for those veterans who are waiving disability compensation in order to receive their full military retirement benefit. This is, however, a very rough magnitude estimate. Since veterans cannot waive a portion of his disability compensation—he must waive it all. The VA maintains no listing or computerized record of the veterans who have waived their disability compensation.

Mr. BRIZZI. John, would you have any estimate of the magnitude of what that might be?

Mr. VOGEL. I could have the staff develop that, Mr. Brizzi, but I don't have it available.

Ms. SHEPHERD. They have no reason to maintain this data.

Mr. BRIZZI. Sure. I understand.

Ms. SHEPHERD. The waiver is in the veteran's hard copy folder, but no record of the waiver is kept in any readily-accessible form. However, we expect that, because disability compensation is tax-exempt and military retirement is not, the vast majority of veterans would waive some portion of their military retirement rather than waiving their disability compensation.

Mr. BRIZZI. Thank you very much.

Ms. HOLLINSHEAD. You had a third question?

Mr. BRIZZI. Yes.

Ms. HOLLINSHEAD. The third question you raised, I think, was how many people might be able to collect if they had two different disabilities.

In our cost estimate we took the rather conservative approach that a person would have to have 20 years of service and a disability in order to collect both VA and military retirement benefits, so we didn't count the people who might have two different disabilities and be able to collect from both systems without 20 years of service. So we have a lower estimate than the maximum cost estimate of the DOD actuaries.

Mr. BRIZZI. So would your estimate, then, be—

Ms. HOLLINSHEAD. It would be higher, if we included people with two different disabilities.

Mr. BRIZZI. Higher, even. Okay. Thank you very much. Thank you, Mr. Chairman.

Mr. **Applegate**. Thank you.

Mr. McEwen?

Mr. **McEwen**. Thank you, Mr. Chairman.

General Lukeman, we're very familiar with the VA disability program, but can you, just for the record, familiarize us with not only the military retirement system, but the military disability retirement system and how they work, please?

General **Lukeman**. Yes, sir.

Let me start with the military retirement system. You have to have 20 years of active service to retire, and then the computation is two and a half percent of basic pay for each year of service. For example, a member retiring with 20 years would receive 50 percent of basic pay, and one retiring with 30 years would receive 75 percent of basic pay. After the recent changes to the military retirement system within the last couple of years, the two and one-half percent multiplier has decreased for those members who are retiring at 20 years of service, but gradually increases until it gets back up to 75 percent at 30 years of service.

But the basic formula is two and a half percent of basic pay for every year of service, decreased, as I say, for anybody who retires at less than 30. That's the basic non-disability retirement system.

The disability retirement system I'd like to give you in a little more detail, because that is obviously the matter of greatest concern here.

First of all, who is entitled to disability? It says that he has to be unfit to perform the duties of his grade.

Secondly, that the disability has to be permanent, and that it can't be the result of intentional misconduct.

And then the member either has to have 20 years of service, or, if he doesn't, the disability has to be at least 30 percent disabling.

And the member has to have eight years of service or the disability—whatever it is—has to be a direct result of performing active duty, or having been incurred in the line of duty in time of war or national emergency, or in line of duty after September 4, 1978, which gets fairly complicated. But if it is line of duty, or if the man or woman is already eligible for military retired pay, and if it is a permanent disability, then generally the individual is entitled to disability retirement pay.

Mr. **McEwen**. What is the eight years?

General **Lukeman**. The eight years is the situation where he has got a 30 percent disability and has eight years of service. If that condition exists, then it doesn't have to be a proximate result of performing active duty or in line of duty, etcetera. In other words, a heart attack type of situation.

Then the way you compute it is: You multiply two and a half percent times each year of service times basic pay, or the percentage of disability on the date that he retires times his basic pay. The member is entitled to take the higher of the two on the military side.

And, of course, we always encourage the individual to go over to the Veterans' Administration and see what the Veterans' Administration says, and if what he can get there under the VA rating is higher then it is, of course, to his advantage to take it, and we encourage him to do so.

Mr. McEWEN. Mr. Vogel, let me describe what I understand you to have said. You mentioned in your testimony, on page four, that a person may not concurrently receive workmen's compensation and retirement as a civil servant. Correct?

So what we're saying is that a person injured in the military can go out and work as a civil servant, receive retirement from the civil service, and go get a disability income from injury that he may have had in the military. That's what causes the conflict.

Is it possible that a person who is injured as a civil servant could enter the military, retire, and still receive civil service disability and a full military retirement?

Mr. VOGEL. A person who worked in the civil service and retired from active duty?

Mr. McEWEN. No, just worked there.

Mr. VOGEL. Just worked there.

Mr. McEWEN. Received a certain percentage of disability.

Mr. VOGEL. I think it is very unlikely that a person would be determined to be so disabled you couldn't perform civilian employment and then go on active duty in the Armed Forces and be able to perform—

Mr. McEWEN. You need to come to my office hours and see the number of people on disability that are more healthy than I am. [Laughter.]

Mr. VOGEL. Really, I don't know what all the eligibility for civil service—

Mr. McEWEN. I mean for academic discussion here. Is there any prohibition?

Mr. VOGEL. I'm not sure. I will have to find out. I am not sure.

Mr. McEWEN. Thank you, Mr. Chairman.

Mr. APPLEGATE. Thank you, Mr. McEwen. On the disability—a military disability you can only have one disability; is that correct? In other words, it could be psychiatric, but you can't also throw in a lot of other things?

General LUKEMAN. All of those things are considered to determine the percentage of disability. If there is more than one disability, then they are all—

Mr. VOGEL. Much like the Veterans' Administration.

General LUKEMAN. Similar.

Mr. VOGEL. The Department of Defense actually uses the Veterans' Administration rating schedule. It is not unusual, at all, to see a member come off of military service—whether on longevity or on the basis of disability—with multiple disabilities, all rated under that schedule and combined to determine the degree of disablement.

Mr. APPLEGATE. Well, I guess the question is: Did they result in different or similar ratings?

Mr. VOGEL. They are similar. I would think—and I don't know that I could back this up with data—that a rating from the military based on the same service medical records—especially if it was 30 or 40 percent—would tend to perhaps be a little bit more—I think the VA is a little more liberal, and it could, in fact, be slightly higher.

I have seen individuals come off active duty—I am proud to be sitting next to a Marine Lieutenant General—I've seen Marines come off active duty with an evaluation of 10 or 20 percent, or maybe 30, for multiple shell fragment wounds, and the VA rated them 50 or 60 percent disablement, which is the reason that the military advises them to come to the VA. Then they elect to receive their compensation. It is a greater benefit than the 30 or 40 percent, or whatever it might have been, provided by evaluation by the respective service department.

General Lukeman. Can I add something to that please, sir? A tremendous advantage, from our point of view, of the VA system in coordination with the DOD system is that the lower-paid military members, based upon the formula that I just described to Mr. McEwen, may not be able to get very much money at all from the Department of Defense because they had low years of service and perhaps a relatively low disability, but still a disability. So when they go over to the VA system that doesn't look at grade, but looks at disability and earning power, then they would be able to get the higher compensation. And we feel that that's entirely fair.

Mr. Applegate. Thank you very much. We could go on and on because there are a lot of questions yet to be answered, and we would, of course, ask you all to be available in the event that any of the members have questions they want to submit.

The Chair recognizes Mr. Smith of New Hampshire. Bob, is there anything that you would like to add to the conversation?

Mr. Smith of New Hampshire. I did have one question, Mr. Chairman. Thank you. It may have been asked. I apologize for being late.

Mr. Vogel, in Mr. Bilirakis' statement he does talk about the fundamental inequity in current law, and it seems like I've held a number of hearings on this legislation, myself, back in my district over the past four or five months since Mike put the bill in. But in your capacity, how do you respond to providing disability payments to individuals who are able to work full time for the U.S. Government in civil service and get retirement? Isn't that basically the inequity?

How does one justify allowing a person to work full time for the civil service and receive disability? That seems to me to be the fundamental inequity, not the other way around.

Mr. Vogel. I don't see that as inequitable. First of all, a person could be disabled to a percentage degree—from 10 to 100 percent.

Mr. Smith of New Hampshire. I understand.

Mr. Vogel. We determine, and the rating schedule seeks to—and I think adequately does seek the average impairment and earning capacity in civilian occupations.

That which may be disabling so that one would be unfit to perform military duty may, in fact, enable them to have some employment in a non-military environment.

I think it is a tribute to some individuals that, while we compute on the average, we are also looking at that specific veteran. It is a tribute to many that they are able, in fact, to be working in a non-military environment, whether it be for the civil service or in the private sector with rather serious disablement.

I don't see any real problem in having a person evaluated at a 10, 20, 30 percent compensation—or even 100 percent—and, in fact, be able to work, although not in the Department of Defense as a uniformed member.

Mr. SMITH of New Hampshire. Well, I don't really have a particular problem with that, either. I don't mean to imply that I do. What I am concerned with is that Mike does make a point. You seem to compound the inequity when you deny that to an individual who wants to receive the military retirement and the disability. Basically his point of discrimination had some merit. When you take the position that paying disability and still allowing full employment—the other way around: A person fully employed is allowed to receive some percentage of disability, whatever it is, then, by allowing that, I believe that the discrimination point does have some merit.

To me you haven't answered the question, really, as to how you can say that that is not discrimination.

At this point I am opposed to the legislation, but I think that the point is well taken that there is some discrimination here. There is no question about it. And it is a question of whether you compound that by passing this type of legislation, or whether you perhaps make some adjustments in it by looking at how you arrived at disability on the basis of full employment.

To me—maybe I'm wrong—but to me the idea of payment of disability is to compensate someone, very justifiably so, for not being able to participate in the work force, at whatever level—10 percent, 30 percent, 100 percent, whatever it is—and they deserve every penny of it, and I don't mean to imply that they don't. But that is the purpose of the disability payment.

In my district meetings, in discussions with my people, when I asked those who were receiving that disability while working full-time if they'd be willing to give it up so that these individuals under Mr. Bilirakis' bill would be covered, the answer was no. So we get right back to the basic funding question. I'd just like a little more clarification from you on that.

Mr. VOGEL. The basic position of the agency is that it has to do with the notion of arising out of the same period of service. That is the heart of the issue insofar as the VA is concerned.

This bill would not, in fact, remove the proscription for what was dual compensation for an individual who retired before being eligible for a longevity retirement, but based on a service-incurred disability. It would not touch those individuals. It doesn't also speak to a number of other ancillary type programs such as survivor benefit plan. It doesn't deal with severance pay for individuals who are disabled but no eligible for permanent disability retirement.

So it doesn't, in fact, if you can concede the point—we don't concede the point that it is an inequity—it's not going to solve the inequities that Mr. Bilirakis feels so strongly about.

I'd be please to provide a breakdown of some of those for you for the record, if you'd like, Mr. Smith, or we could communicate that.

Mr. SMITH of New Hampshire. I'll defer to the Chairman on that. That's not necessary. We can submit it in writing.

Mr. APPLEGATE. That's fine.

Thank you, Mr. Smith. I don't imagine you're ready to submit any legislation to correct those so-called "inequities"?

Mr. **Smith** of New Hampshire. Not at this point. No co-sponsors, either.

Mr. **Applegate**. Again let me say thanks to the panel for coming before the committee. We appreciate your testimony very much. As always, John, it is good to see you. General Lukeman and ladies from the CBO, thank you very much. If you would sort of hang around, if you can. I'm not sure that there will be any more questions, but in the event.

Thank you very much.

Mr. **Vogel**. Thank you, Mr. Chairman.

General **Lukeman**. Thank you, sir.

Mr. **Applegate**. The next panel we will have will be some old friends, Mr. Phil Riggin, Director of the National Legislative Commission; and Phil Wilkerson, Assistant Director of the National Veterans' Affairs and Rehabilitation Commission for the American Legion; and Mr. Robert Alvarez, National Service Director of the Military Order of Purple Hearts; Mr. Charles Jackson, vice president for Governmental Affairs, Non Commissioned Officers Association.

Gentlemen, thank you for being here. It is sort of old hat to you. I guess we can take it that we have it in order. We can start with Phil.

STATEMENT OF E. PHILIP RIGGIN, DIRECTOR, NATIONAL LEGISLATIVE COMMISSION, THE AMERICAN LEGION; ACCOMPANIED BY PHILIP R. WILKERSON, ASSISTANT DIRECTOR, NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION

Mr. **Riggin**. Thank you, Mr. Chairman. We do appreciate the opportunity to be here to present testimony on H.R. 303. We recognize your time constraints, and we are prepared to deal with that. With me this morning is Phil Wilkerson of our Veterans Affairs and Rehabilitation Division. He is prepared to summarize our full statement, and both of us will be available to answer any questions that any members of the subcommittee may have.

Mr. **Wilkerson**. Mr. Chairman and members of the committee, the American Legion appreciates the opportunity to present its views on H.R. 303, a bill to amend section 3104 of title 38 to remove the restriction against the receipt of Armed Forces non-disability retirement pay based on length of service concurrently with disability compensation provided under the laws of the Veterans' Administration.

Mr. Chairman, the delegates to the 68th National Convention of the American Legion adopted resolution 485 in continuing support of legislative efforts to remove what this organization perceives to be a long-standing inequity in the law as it applies to career military personnel.

H.R. 303 recognizes the fact that military retirees are the only Federal employees who are barred from receiving their full retirement, together with compensation for a disability incurred as a result of military service.

Other career Federal employees, including Members of Congress, must make no such sacrifice. In point of fact, military retirees who were unfortunate enough to have incurred a service-connected injury or chronic disease do not receive the full benefit intended by VA compensation.

One purpose of this benefit is to provide some measure of economic assistance in recognition of a chronic disability and its potential impact on life expectancy. Because of the legal prohibition against receipt of dual benefits, military retirees must, in fact, fund their own disability payments.

The American Legion has, for many years, sought to remove this restriction, as it is an unnecessary and unwarranted burden upon those men and women who have devoted their adult lives and careers of military service to this nation.

We strongly believe they have earned the benefits provided under the Armed Forces non-disability retirement program, and likewise feel they should be entitled to receive full compensation from the VA for their service-connected disabilities.

In our view there is a very clear-cut issue of equity involved.

The two programs, military retirement and VA disability compensation, are based upon very different standards—twenty or more years of military service versus a percentage of disability determined by the VA—and benefits provided under each program are for totally different purposes: Recognition and reward for honest and faithful service in the Armed Forces, versus compensation for impairment in average earning capacity in civilian life.

Several examples of inequity created under the present law are worth considering.

If an individual, during a minimum period of active duty, incurs a chronic disability, compensation benefits are payable. If that individual subsequently enters the civil service their compensation will not be affected by such employment.

When eligible for retirement under civil service, total years of government service, including time spent on active duty, will be credited in the computation of retirement pay. VA compensation of such individuals will, likewise, not be affected by the receipt of civil service retirement pay.

In this manner the disabled non-military government career worker enjoys the full benefits stemming from Federal service.

On the other hand, in the case of an individual who, during years of a career in the Armed Forces, incurs a disability, his or her retirement pay will be based solely upon years of service and pay grade attained. It will in no way reflect the presence of any degree of disability.

The disability compensation is payable by the VA for service-connected disability of a portion of the retired pay equal to the amount of VA compensation must not be waived. Section 3104 effectively caps the total amount of retirement benefits payable to a disabled military retiree. As previously stated, other Federal workers do not suffer these same constraints.

Mr. Chairman, the disparity in benefits payable to retired military, as compared to the non-military Federal employee, is substantial. The American Legion strongly believes this inequity should be eliminated so as to permit military retirees to receive the full amount of disability compensation for service-connected disabilities which they may be entitled under section 3104 without suffering a diminution or a reduction in their military retirement pay that is based on length of service.

This is not a new issue, or is ours a hastily conceived position. The American Legion has, for many years, urged the passage of legislation, the intent of which has been identical to H.R. 303; therefore, we certainly commend the author of this legislation for his persistence, and the subcommittee for holding this hearing.

Mr. Chairman, that concludes our statement.

[The prepared statement of the American Legion appears on p. 87.]

Mr. APPLEGATE. Thank you, Mr. Wilkerson.

Mr. Jackson?

STATEMENT OF CHARLES JACKSON, VICE PRESIDENT FOR GOVERNMENT AFFAIRS, NON COMMISSIONED OFFICERS ASSOCIATION

Mr. JACKSON. Yes, Mr. Chairman.

Mr. Chairman, the Non Commissioned Officers Association is sincerely grateful to the committee for scheduling this hearing exclusively to hear testimony on the concurrent receipt of military longevity retirement pay and veterans' disability compensation. The issue is a matter of equity for military retirees who have, for too long, faced discrimination in regard to veterans' benefits only because they served their country for more than 20 years.

For some reason the public and congressional perception of the military retiree is such that they are considered "less the veteran" than their counterpart who has served less than 20 years of military service. Current law is filled with examples of this perception.

Unlike other veterans, there are no special employment counseling programs for retirees, they are denied job preference programs, prevented from fully utilizing their educational benefits, and generally at the end of the line when it comes to medical care. And yet, their only crime is that they remained in uniform too long.

Even the Supreme Court, in its consideration of the issue of concurrent receipt, did not conclude that this policy of denying benefits to retirees was fair. In fact, they only concluded that it was constitutional for Congress to invoke financial considerations over fairness in this issue.

There exists a common misperception that military retirees live well and comfortably, receiving half to three-quarters of their active duty pay after retirement with unlimited free medical care and commissaries and exchange privileges. The facts, though, are quite different from the perception.

The facts are that in reality the military retiree receives only 28 to 38 percent of active duty pay in retirement. In fact, nearly 700,000, about half of all military retirees, receive less than $10,000 annually. The typical retiree receives just over $1,000 per month, and that is before deduction for taxes and survivor benefit programs.

Military retirees are not living off the fat of the land, Mr. Chairman. They must all seek second careers, and they enter the job market at substantially lower wages, while most of their contemporaries are enjoying their most financially rewarding years.

According to DOD reports published last year, military retirees will have lifetime earnings of 20 to 27 percent below those of their civilian counterparts, and at the same time, a greatly reduced life expectancy. Commissary and exchange privileges, and the sometimes medical care, hardly make up for these facts about the real military retiree.

Many believe the argument for equity and concurrent receipt have some basis in comparing the military and Federal civilian employee retirement systems. It does not. The systems are as incompatible as the character of the service. Few civil servants face the same hazards, bear the same burdens, or must move as often as military personnel. These differences justify the disparities in the system. Although both systems compensate partial disabilities, it is only less the veteran—the military retiree—who must choose between compensation for either his partial disability or his 20 years of service.

A veteran can spend 20 years in any other profession and be compensated for both longevity and service-connected disability. The retired Teamster, the dentist, the President, the legislator, all may earn a longevity retirement that does not interfere with VA service-connected disability. Only the military retiree suffers the mutual exclusion of one or the other.

The only exception to this rule is created when a military retiree combines his military service with his Federal civilian service and retires on a single Federal annuity. Only then is his income no longer subject to the offset rule.

Mr. Chairman, this set of circumstances creates the greatest inequity of all in that only some retirees are subject to the offset.

Resolution and equity on this issue is only available through the Congress. Now, Congress may continue to hide behind the protective decision of the Supreme Court and continue its less than a veteran perception of the military retiree, or Congress can act boldly to repeal this long-standing inequity in the law.

NCOA strongly urges Congress to enact H.R. 303, at whatever cost, to provide the fair and equitable treatment the nation's military veterans really deserve.

That concludes my statement, sir. I am prepared to answer any questions.

[The prepared statement of Mr. Jackson appears on p. 90.]

Mr. APPLEGATE. Mr. Alvarez?

STATEMENT OF ROBERT L. ALVAREZ, NATIONAL SERVICE DIRECTOR, MILITARY ORDER OF THE PURPLE HEART

Mr. ALVAREZ. Thank you, Mr. Chairman.

The Military Order of the Purple Heart is honored to have the opportunity to submit our legislative views on H.R. 303, the elimination of the waiver of military retired pay for those longevity retirees in receipt of veterans' compensation. It is our pleasure to bring before you the views of our organization, which were endorsed by our membership, by resolution, at our 1987 National Convention in Orlando, Florida.

Since July 13, 1943, the payment of military retired pay and veterans' compensation concurrently is prohibited by 38 U.S.C. 3104 (a)(a) and 38 U.S.C. 3105. In contrast, those veterans in receipt of retired pay from the private sector and civil service are not required to take a dollar-for-dollar offset from their retired pay in order to receive VA compensation.

Further inequity exists in the fact that VA compensation includes special allowances for dependency and extra allowances for special monthly compensation, which are above and beyond the normal veterans' compensation rates, whereas military retired pay does not include any of these items. Yet, the military retiree is unjustly penalized for receipt of these extra benefits.

Additionally, the longevity military retiree has a vested interest in his retirement system, to which monies have been paid into based upon his length of service—a system which has no logical correlation to veterans compensation. Each system is a unique system and has separate funding requirements.

We would also like to respond to a letter sent to our organization which stated that we should be prepared to relinquish or trade a portion or portions of VA benefits to offset the cost of this implementation. The Military Order of the Purple Heart takes umbrage to this communication. We wish to state, unequivocally, that we will not support any trading of VA benefits for this program, as there is no relationship between the cost of this program and VA benefits. In fact, we submit to you that there is no cost related to this restoration of benefits already on deposit through the Department of Defense military retiree fund.

We thank you for this opportunity to present our views and hope that you will give favorable consideration to eliminating the unjust requirement for longevity military retirees to waive their military retired pay when in receipt of VA compensation.

Thank you.

[The prepared statement of Mr. Alvarez appears on p. 94.]

Mr. **Applegate**. Thank you very much, Mr. Alvarez. And, gentlemen, thank you very much for your testimony.

Let me just ask you very quickly here: Phil, your testimony and Mr. Jackson's, I don't think really got into the impact of the financing or the cost of this, and I note that Mr. Alvarez says that there is no cost related to this restoration of benefits already on deposit to the Department of Defense Military Retiree Fund. I'm not sure that I quite fully understand that. However, let me ask you this: What is your position on it, in the event that we pass this.

Now, we're talking about the fact that there is so much going to be impacted on the Veterans' Administration and so much on DOD. DOD is another problem that gives me a few consternations, I guess, in that if we would pass this bill we are mandating certain costs upon a department over which we have no authority.

But what kind of an impact would there be? In other words, as I had mentioned in my letter to you, I wanted to know what programs would be affected in order to stay within the Gramm-Rudman and the summit agreement. Where do we take the money? Where do we get the money?

Mr. **Jackson**. Mr. Chairman, the position of the Non Commissioned Officers Association on the funding issue is that today we are here to discuss primarily a question of merit and public conscious equity.

We believe that the real issue is: Is it equitable to deny concurrent receipt to the military retiree? If we answer that question, and if this committee agrees that it is inequitable, then we feel that the cost is not really as much of a problem. We have no suggestions as to where the funding would come from. We would only recommend that at that point, once we decided that we were going to correct this inequity, that perhaps we would take the issue to the floor and ask for a budget waiver, if required.

Mr. APPLEGATE. Yes. Well, I appreciate that. But, of course, in my letter that I sent out I asked for some input on that. I think it does play a very important role. As a matter of fact, in everything we do, cost does play a very important role. And while there may be very strong merit on many of the pieces of legislation that come before us—and we're dealing with some now for World War I veterans, we're dealing with atomic veterans which we're running into problems now with, we're dealing with former POW's, we're dealing with a lot of them—and the budgetary impact is right smack in the middle of all of them. So it does play a very important role.

Yes, we are here to hear the merits; but we are also here to find out how we're going to accomplish the bill.

Mr. RIGGIN. Mr. Chairman, on behalf of the American Legion in response to your question, as you can clearly see from our testimony, ours is a philosophical approach, just as the Non Commissioned Officers is. We did not include any information regarding financial aspects of this legislation, and we did that intentionally for a couple of different reasons.

We have heard this morning cost estimates of this legislation which have been far-ranging, and obviously any recommendations to make any savings, either in programs within the Veterans' Administration or in DOD, have to be based upon a more accurate cost range than what we have heard this morning.

At this particular point, as you well know, VA pays the entire price for what is going on. Any additional cost that would be incurred by this legislation would be essentially DOD costs, and the American Legion really can't offer any particular thoughts in that regard, primarily because of limited expertise in how DOD budget is put together, and specifically how military retiree aspects of that budget are put together.

I realize that doesn't fully answer your question, but I simply wanted to reinforce where our organization was coming from and the parameters of its statement this morning.

Mr. APPLEGATE. Well, I realize that there has been a lot of different figures, but I figured that even if you take the most minimal amount—which is what Mr. Bilirakis had brought up—we know there is going to be an impact somewhere, and somebody is going to be impacted, and some programs are. This is what we have to deal with.

Now, it's good to argue those points on the merits of the bill, and I agree with that; and I'm not sure that I totally disagree. But we have responsibilities, too. We have them to the taxpayers, and we are desperately trying to find ways that we can spend the money as fairly and equitably as we can, and without seeing the budget deficit continue soaring.

So that is what the problem is. You can understand that, and I know that because we've discussed it before.

I think that that is probably all I have to say right now. At this point I have no further questions.

Mr. Bilirakis?

Mr. BILIRAKIS. Well, Mr. Chairman, I know that we all—and certainly you—believe very strongly in the thought that the—we're talking really about the costs of war here, and the cost of war must not end, and should not end, with the end of the war. It has got to continue on, and obviously that is why we have a Veterans' Administration.

But for these good people to have put in their time—20-plus years—and then basically to have had to done so for nothing is wrong. I mean, they picked up a disability during the time they were in the service, and so they have earned that disability, and now they put in 20-plus years and have to waive all that, which means they've put in all of that time at a lot lower pay—well, anyhow, we've talked about that.

I am going to ask these gentlemen—and if they don't have any immediate answers, possibly one of the forthcoming groups might, but I am concerned with pay—when I say "pay" maybe we take a lot of areas into consideration there—comparable with their civilian counterparts over a lifetime.

We talked about civil servants contributing to their retirement and military doesn't have to. On the other hand, a civil servant generally makes a heck of a lot more money than that person in the military, and I think that serving all of that time—that's my personal opinion—more than compensates for not contributing to their retirement.

But I would ask you gentlemen what is the typical or average VA disability amount? Do you have that at your fingertips?

[No response.]

Mr. BILIRAKIS. I know it varies by disability by disability percentage, by the percentage that is applied. But there must be some kind of an average figure. There certainly has got to be a median figure. There must be an average figure. I'm wondering what the typical or average retirement pay amount is. I'm sure we would have that. Do you have that, Chuck, right at your fingertips? Primarily there would be NCO's when they would be getting out.

Mr. JACKSON. Well, the average enlisted member, or the average typical retiree, is around $12,000 a year. About half of them, as I pointed out in my statement, are below $10,000 a year, or right at $10,000.

DOD published some papers last summer with background information on military compensation which highlights some of these questions that you are asking. They point out in the publication that the average military retiree will receive 20 to 27 percent less than his equally-educated and equally-aged counterpart in lifetime earnings.

Mr. BILIRAKIS. All right. That is the military retiree. What is the average VA disability? Could we ballpark that?

Mr. JACKSON. That would be a very difficult one.

Mr. BILIRAKIS. Phil, do you think you could—

Mr. RIGGIN. Mr. Bilirakis, that would be a very, very ballpark figure, and I think we would have to defer to the Veterans' Administration on that as to what that average would be.

Mr. BILIRAKIS. All right. Typically, a military retiree retires after how many years military service?

Mr. JACKSON. About 22.

Mr. BILIRAKIS. About 22 years. How many of those military retirees would enter the second-career job market after they have gotten out.

Mr. JACKSON. I would say almost 100 percent, sir.

Mr. BILIRAKIS. Almost 100 percent. Why?

Mr. JACKSON. Because they certainly can't afford to live on the amount of money that they receive in military retirement.

Mr. BILIRAKIS. All right. How about earnings? How about earnings for that person in that second job market? Are they—

Mr. JACKSON. Substantially lower than their counterparts.

Mr. BILIRAKIS. Do we have statistics to that effect?

Mr. JACKSON. Yes, sir. Yes, sir, we do. We can provide those to the committee if you would like.

Mr. BILIRAKIS. Okay. This is information that I think is significant that we ought to have, and if any of the forthcoming groups, or any of your groups might be able to gather that information and submit it for the record I would appreciate it—all of those questions that I've asked.

Thank you very much, gentlemen. Thank you, Mr. Chairman.

[The information appears on p. 111.]

Mr. APPLEGATE. Thank you, Mr. Bilirakis.

I'm sorry, but I missed that. Did you give an average earnings, or were you unable to give that in earning power after they have retired. Did he give you that?

Mr. JACKSON. No. I did not give you a specific figure, Mr. Chairman.

Mr. APPLEGATE. Oh. Okay.

Mr. JACKSON. I said that based on the DOD report from last summer, that their lifetime earnings would be 20 to 27 percent below their equally-aged and educated counterparts in civilian society.

Mr. APPLEGATE. Would those lifetime earnings take into consideration the so-called "benefits" that a military retiree gets—the PX and the commissary and what not, depending, of course, on where they live?

Mr. JACKSON. Well, I think that's another misconception in the minds of a lot of people that the military retiree is living very well. The commissary, PX, and medical privileges, as you point out, Mr. Chairman, are really a factor of geographic location as to whether or not you can even use a commissary or a PX.

Military medical care for retirees has gone—has been deteriorating over the years, forcing most retirees into the CHAMPUS program where they are paying 25 percent of their medical care, and many civilian retirees from companies have an equal or even better medical program that their employers provide for them after retirement.

So the military retiree, as I stated earlier, is certainly not living off the fat of the land, as many perceive.

Mr. **Applegate**. Thank you, Mr. Jackson.

Mr. Smith?

Mr. **Smith** of New Hampshire. I have no questions.

Mr. **Applegate**. Well, there are no questions. Gentlemen, thank you very much again for appearing before the committee.

Our next panel, panel IV, will consist of: Col. Herb Rosenbleeth (ret.) National Legislative Director, Jewish War Veterans; Comdr. John Wanamaker, who has appeared before the committee many times, Deputy Director of Legislative Affairs, the Retired Officers Association; and Mr. Stephen Wolonsky, president of the Uniformed Services Disabled Retirees.

Gentlemen, I appreciate your appearing before us. Colonel, I understand this will be your first appearance before the committee.

Colonel **Rosenbleeth**. Yes, sir. That's correct.

Mr. **Applegate**. We welcome you here.

Colonel **Rosenbleeth**. Thank you.

Mr. **Applegate**. Since you are listed as number one, we will let you begin.

STATEMENT OF COL. HERB ROSENBLEETH, (RET.), NATIONAL LEGISLATIVE DIRECTOR, JEWISH WAR VETERANS

Colonel **Rosenbleeth**. Chairman Applegate and members of the committee, on behalf of our membership I thank you for the opportunity to appear today to testify on this important legislation.

I have been crossing out with a red pen things from my statement that have already been mentioned. I have got it almost all crossed out, so I would like to just submit my statement for the record and make a couple of comments.

First, I would really sincerely like to thank Congressman Bilirakis for his attitude, his effort, and his persistence in pursuing what I personally think is a very, very important effort.

I have just retired from the military after 26 years of service. I was discharged from the Marine Corps as a lance corporal in my young days. And so this means a lot to me.

I have got a very, very good friend—a very dedicated career officer—who just went out with 100 percent disability after 28 years of service. The disability occurred in the past year. Why should his retirement pay be the same as mine, or his net income be approximately the same as mine? His is non-taxable; mine is taxable. His disability occurred after he had already earned retirement pay.

Previous witnesses have said we're talking about the same period of service. We are not. This guy earned the retirement pay. He could have quit two years ago and had all of his retirement pay. He stayed in. He stayed in at the DOD's request. Now he is 100 percent disabled. I think somewhere that should be compensated.

We've talked about second careers. This guy has got no second career.

As I see it, and as our statement says, we see that the Veterans' Administration is paying disability as prescribed by law, and as we feel is equitably supposed to happen. We feel that DOD should kick in their due to people like my friend and others we're talking about.

I thank you for the opportunity to be here today.

[The prepared statement of Colonel Rosenbleeth appears on p. 96.]

Mr. APPLEGATE. Thank you very much, Colonel.

Commander?

STATEMENT OF COMDR. JOHN F. WANAMAKER, (RET.), DEPUTY DIRECTOR OF LEGISLATIVE AFFAIRS, THE RETIRED OFFICERS ASSOCIATION

Commander WANAMAKER. Mr. Chairman and members of the committee, I am Commander John Wanamaker, U.S. Navy retired, Deputy Director of Legislative Affairs for the Retired Officers Association, which has its national headquarters at 201 North Washington Street in Alexandria, Virginia. Our association has a membership of over 354,000 active duty, retired, and reserve officers of the seven uniformed services. Included in our membership are approximately 50,000 auxiliary members who are survivors of former members.

Our appearance here before you today is in support of legislation H.R. 303 which would provide appropriate compensation to certain retired military veterans for the loss of future earning capability resulting from injuries or illnesses incurred in the line of duty.

Under current law all disabled veterans, with one exception, are provided disability compensation from the Veterans' Administration, and that one exception is the military veteran who retired for longevity, and who must forfeit an equal amount of their retired pay in order to receive VA disability compensation.

The tax exempt feature of VA compensation is, therefore, the only financial advantage a retired military veteran realizes as compensation for his loss in future earning capability.

It is important for the committee to understand that in supporting H.R. 303 we are not seeking concurrent payment of benefits based on the same disability. Further, neither we nor H.R. 303 propose that concurrent payments be made for the same service. We are only asking that the government pay an individual the retired pay he has earned based on years of military service, and should that individual become injured on contract an illness in the line of duty that causes him to lose future earnings capability, then the government should compensate him for that loss like all other veterans.

It is often cited that the act of March 3, 1891, is the basis for current law title 38 U.S. Code 3104, and has remained relatively unchanged since its codification in title 38 in 1958. It's important to underscore that when that 1891 statute was enacted, retired pay was based on age and years of service and fixed at 75 percent of active duty basic pay for all retirees. In contrast, of all military retirees today, only 21 percent retire with 30 years or more of service and have their retired pay computed at that 75 percent of basic pay level.

Congressional prerogative to limit the compensation of retired veterans is not the issue here today. For example, in 1985, in the opinion of the United States Claims Court, Judge Margolis rendered the decision that the Congressional intent in enacting the act of March 3, 1891, was to limit the amount of compensation certain classes of individuals would receive as a result of military service.

Mr. Chairman, what is at issue today is equity and how to fairly compensate for loss of earning power. We fully realize that comparing the military retirement system and civil service retirement system is inappropriate since each system is designed to accomplish different purposes.

I would point out, however, that a civil service employee can receive VA disability compensation both while employed by the government and after receipt of his civil service retirement. It is difficult for military retirees to understand why they are denied concurrent receipt in their retired pay and VA disability compensation while a civil service employee can receive both civil service retirement and VA compensation with no waiver being required.

What is particularly distressing is that, in addition, the civil service employee can credit his military years of service to increase the civil service retirement annuity. We're not contending that the civil service employee is not fully entitled to do this. In fact, we believe a disabled veteran should be fully compensated for his reduced earning capacity due to his injuries or illness, whether he be military, civil service, or a private sector employee or retiree.

Mr. Chairman, if the committee were to favorably consider H.R. 303, it would be faced with a problem of funding the military retired pay that has been waived by retirees under current law. There have been various estimates of the cost of H.R. 303, and final word on these costs should be available from the Defense Department witness.

However, using a simplistic approach and the data contained in the DOD statistical report on the military retirement system, we came up with an estimate that the cost would be in the neighborhood of about $1.1 billion per year. Since the House of Representatives has already agreed to the Budget Resolution without considering action on H.R. 303, it will be necessary to seek alternate means to fit that measure into the acceptable framework of that budget resolution.

While expressing our strong support for H.R. 303 as it has been introduced, we also know that the committee has under consideration various alternatives with the intention of reducing the associated costs.

Recognizing that budgetary constraints present a significant obstacle to favorable consideration of this measure, we submit before the committee for its consideration a less costly alternative than the plan contemplated by H.R. 303. In this regard, we could support a committee initiative to limit the combined VA disability compensation and military retired pay to a maximum 75 percent of the basic pay for the grade held at time of retirement—adjusted, of course, for subsequent cost-of-living increases.

In establishing this limit, we would not change the VA compensation portion of the combination, but would have military retired pay adjusted to reflect that limitation. Under this concept, the increased benefits would be realized more fully by most enlisted members who, because of high year of tenure, leave military service short of the 30-year mark. This would also accommodate those who are forced to retire early due to injuries or illnesses and would place them in a financial status similar to their peers who were able to remain in service for a full 30-year career.

It is recommended that the following actions be taken to facilitate successful passage of H.R. 303.

Limit the combined VA disability compensation and military retired pay to not more than 75 percent of basic pay of the grade at time of retirement with appropriate cost-of-living adjustments. This would correspond to the limitations imposed by the act of 3 March, 1891, the law from which the current statutes evolved. This would further reduce the number of those eligible for increased benefits by almost 21 percent—those who have retired with over 30 years of service and already receiving that maximum amount.

We would also request that the VA be authorized access to IRS records, as recommended by a recent GAO report, which would eliminate fraud in VA pension programs with resultant overpayments, which are estimated to be $182.5 million annually.

And combine the savings from eliminating those VA pension overpayments with a delayed effective date of 1 August 1989 for H.R. 303 to avoid budgetary impact in the fiscal year 1989 budget resolution. This delay would enable the Department of Defense to make the necessary adjustments to the retired pay account.

I would recommend that the measure to be attached to the VA compensation authorization bill to enhance passage.

Thank you, Mr. Chairman, for your indulgence in our presentation today.

[The prepared statement of Commander Wanamaker appears on p. 97.]

Mr. APPLEGATE. Thank you, Commander.

Mr. Wolonsky?

STATEMENT OF STEPHEN WOLONSKY, PRESIDENT, UNIFORMED SERVICES DISABLED RETIREES

Mr. WOLONSKY. Thank you, Mr. Chairman, and members of the subcommittee.

I will summarize my statement.

Mr. Chairman, we all deeply appreciate your widely known support for all veterans.

I am Stephen Wolonsky, a career military retiree from Albuquerque, New Mexico. I served 28 years in the Army and was disabled by my service in three wars. I am president of the Uniformed Services Disabled Retirees.

I thank you for the opportunity to present the views of our membership.

USDR first challenged the law as plaintiffs in the Federal courts in the *Absher* case. The U.S. Court of Appeals for Federal Circuit rejected our attempt to use the equal protection clause to gain greater benefits than Congress has chosen to provide under a particular program. Therefore, the courts have placed this problem firmly before Congress, finding no improper discrimination, but simply that the congressional purpose in the prohibition against dual compensation was to save money.

Today we appeal to the Congress as our last and only remedy to change the law and correct this injustice to career military retirees who were injured in the service of their country.

The Congress imposed the economy measure only on the career military, and it, alone, has authority to change it. So we ask that you, the members of the Veterans' Affairs Committee, remain open to our pleas for consideration.

To illustrate the experience of most USDR members with the current law, I will describe my own situation. As a member of the Army, I received injuries leaving me with limited use of my extremities. I currently receive no retirement pay from the Department of Defense because I am 100 percent disabled. Every month I receive a disability check from the Veterans' Administration.

Mr. DeCicco, after over 20 years of service, receives a small part of his retirement pay from the Department of Defense every month and the Veterans' Administration sends the remainder to him in a disability compensation check.

In fact, the more years of active duty served beyond 20 years of service, the more retired pay you will be required to forfeit.

As you will note from these examples, if the prohibition in current law is changed, the additional cost would fall upon the Department of Defense, not the Veterans' Administration.

There are two different purposes to these compensation programs. The purpose of the disability benefit compensation program is to replace the loss of future earnings caused by disability. The purpose of retirement pay is to induce quality personnel to serve in the military, and he has earned it.

Military retirees who are not disabled often have second careers with additional earnings. We do not have this option available to us.

It is troubling to USDR members to discover that if we had served less than 20 years and were disabled, but continued to work for a private company or the Federal civil service, we could receive a disability benefit and Federal retirement pay or a private pension.

We find the difference of treatment between career military and non-career military hard to justify, except upon, as the courts have pointed out, fiscal restraint.

The Federal retiree may even base their retirement period upon military service time, so that the same service period is used as a basis for two different payments.

The following example is more difficult to explain. A member of USDR is a World War II career military retiree who returned to active duty during the Korean Conflict. He became disabled upon his return during his service in Korea. He is still subject to the offset provision. He was already receiving retirement pay before being recalled to active duty. He receives nothing additional for his injury, and must fund his own disability compensation from his retirement pay.

Federal employees, under the Federal Employees' Compensation Act, receive disability benefits for partial permanent, and permanent disability. Mr. DeCicco and I would be eligible for such benefits under title 5 U.S. Code, section 8107.

Civil service employees may receive periodic payments for such disabilities under this section and also receive retirement pay or regular salary if they return to work. This payment is not wage replacement, but represents payment for the injury.

On behalf of the members of USDR I urge the committee to carefully study the implications of the current law and the enactment of H.R. 303.

Once the strict prohibition is removed from the current statutes, the committee could assist the Department of Defense and the Veterans' Administration in studying the feasibility of paying the career military a benefit for their injury. We believe there are many options for phasing in such a disability payment.

The courts have clearly left the policy decision to Congress to change benefits to career military retirees. We are hopeful that Congress, upon consideration of the treatment of career military retirees will make that change.

This concludes my statement, Mr. Chairman.

[The prepared statement of Mr. Wolonsky appears on p. 102.]

Mr. APPLEGATE. Thank you very much, gentlemen. I appreciate your remarks and your summarization.

Commander, I want to certainly thank you, particularly, for recognizing the budget considerations and what we are groping with and the problems, and for adding some constructive thoughts on how we can go about meeting the problem that we are facing. We appreciate that very much.

I would like to mention, to, Mr. Wolonsky, you are represented by a former Member of the United States House of Representatives, Peter Kyros, and I think Peter is in the audience someplace. Peter, are you back there somewhere? There he is. It is good to have Peter here. He was from the great State of Maine—a former Member, and he also represents the USDR. A pretty fair golfer, too, when he's swinging right.

Mr. Wolonsky, you stated your concerns can be met without undue burden on the budget. Can you explain how that happens?

Mr. WOLONSKY. The only part I see as undue burden on the budget, Mr. Chairman, as I understand, when I first entered the service my pay was reduced as an imputed contribution to my retirement fund. What has happened to this money that was taken from my pay and all other retirees who have served 20 or more years? And if it was reduced, this money had to be put somewhere, and if it has, it should have been drawing interest if it has not been paid to us. It is money that we earned, and this is what we're asking. We are now receiving our VA compensation, but it is our retirement pay that we are requesting to be returned to us.

Mr. APPLEGATE. You make mention of your contributions. Are you talking about financial contributions to the fund?

Mr. WOLONSKY. Yes, sir.

Mr. APPLEGATE. What contributions are you speaking of?

Mr. WOLONSKY. Before Congress several years ago they brought up imputed contribution, which is—

Mr. APPLEGATE. I'm sorry. Would you please repeat that?

Mr. WOLONSKY. Several years ago, in the past, it was brought before a session of Congress that our pay was being reduced from six and a half to seven percent. We never saw this in our pay. It was automatically taken out from the budget, and supposedly put into a retirement fund—same as civil service. In civil service they take it out of their pay at pay time, which you see. Ours you could not see because it was taken out directly from the budget, reduced at that time, and placed into a retirement fund—six and a half to seven percent of our pay. This is what they called "imputed contribution."

Mr. APPLEGATE. I might maybe ask General Lukeman if he would have any response to that at all, if you might be able to clarify that or let us know.

General LUKEMAN. At one time, although it is not entirely clear, it seemed to some that military active duty pay was being held down at a lower level than it otherwise might have been because it is a non-contributory retirement system. So I think that the witness is correct that at one time that was the case.

However, the discussion that we had earlier with the Congressional Budget Office people shows that the way you put money into the military retirement fund is another matter. The so-called "unfunded liability" for those retired people who were not under the accrual accounting system is now fully funded out of general revenues to amortize the liability.

I am not sure, though, that the witness' point relates directly to the matter at hand.

Mr. APPLEGATE. Thank you very much, General. I appreciate that.

I just have one other thing to mention to Colonel Rosenbleeth. I think that we certainly share your view in your written statement that this bill should be shared with the Armed Forces Committee. I think that is what you had suggested as a recommendation, which I now think is probably a pretty good idea. It is going to be very difficult for us to mandate any costs upon that committee without them having some consideration for it.

But I also know that you didn't necessarily have any comment on the budgetary impact. Do you have any thoughts about that at all?

Colonel ROSENBLEETH. I do not. No, sir. Not at this time.

Mr. APPLEGATE. All right. I thank you for that very candid answer.

Mr. McEwen?

Mr. MCEWEN. No questions.

Mr. APPLEGATE. Mr. Bilirakis?

Mr. BILIRAKIS. I guess I always have something, Mr. Chairman. I guess I shutter to think what the budget impact would have been all of these many years, as bad as it was, were the military personnel paid the wage, if you will, that they deserved as related to the civilian work force, even taking into consideration all of their benefits, if you will.

But one of the inducements of staying in the military—of joining in the first place and staying in the military at that rotten pay—and it is still rotten. Even if it is a lot better than it used to be—certainly was the fact that maybe that corresponding amount—whatever that hazy area is—would be made up for later on as retirement pay. I just don't see how in the world we could possibly overlook that.

All of the veterans' organizations, so many of them who have endorsed this legislation have been very supportive. I'm just very grateful to all of them; particularly, though, to Uniformed Services Disabled Retirees. Steve, you've done a great job and, of course, all of your members fall in this category. Are there any salient—and I didn't mention this to you ahead of time so I am being unfair in that you don't have something waiting there just waiting for me to ask the question, but are there any particular salient cases of some of your people that you know are really suffering as a result of the fact that they are not able to get their retirement pay because they have just had to waive it? Can you share anything at all with us?

Mr. WANAMAKER. Mr. Bilirakis, letters constantly cross my desk asking us to support this, I'm sure that I could come up with many, many very rapidly. I see letters of correspondence from throughout the country on a regular basis, and it hasn't only been in preparation for these hearings, it has been over the years. That said, something has got to be done. I have seen much correspondence, and I could provide many examples of people who are suffering under this.

Mr. BILIRAKIS. How about Mr. Wolonsky? Would you have any off the top of your head? We're going to hear some later on, and we've talked about them. In my testimony I have mentioned one particular case. Would you have anything you'd like to share with this committee?

Mr. WOLONSKY. Even right now I could give a couple.

There is one in Midway City, Oklahoma. He retired as an E–5. And E–5, retiring back in 1963, had pay of about $125 a month.

Mr. BILIRAKIS. That's $125 a month.

Mr. WOLONSKY. Right.

Mr. BILIRAKIS. Go ahead.

Mr. WOLONSKY. As of today his retirement pay probably is around $300. He is 50 percent disabled on VA compensation. That wipes out his retirement pay. So all he is receiving is his VA compensation.

Mr. BILIRAKIS. And how much would that be, approximately?

Mr. WOLONSKY. VA compensation for 50 percent is around $400 a month.

Mr. BILIRAKIS. All right. And he has had to waive all of his retirement?

Mr. WOLONSKY. He waived all of his retirement, and his income is $400 a month.

Mr. BILIRAKIS. Is that man working at a second career?

Mr. WOLONSKY. He cannot work. He is approximately 75 years old.

Mr. BILIRAKIS. Would you say that his opportunities during all of these years towards a second career have been adversely affected by virtue of that 50 percent disability?

Mr. WOLONSKY. Yes, sir. I would say it would. It depends on what his disability was, and it was his extremities.

Mr. BILIRAKIS. Herb, do you have anything you might want to offer at this point? I know in your opening remarks you mentioned a lance corporal.

Colonel ROSENBLEETH. No. I know there are many cases, as both of these gentlemen also mentioned this case where individuals retired receiving only their VA disability, not a large amount, and have forfeited the—and I think that's what hurts. It is not only the money, I think. It is the principle of the thing. The idea that all those years in the military you believe and you think that you are—besides the patriotism, and there is no question that it's there in all those people, but somehow you think that there is a light at the end of the tunnel when you are going to enjoy some of this with all of the moves and all the times in the bad places of the world that some of us have been, you think that some day you are going to get this.

And then when you are disabled—and nobody thinks of this. You always think it will be the other guy. But these people wound up disabled, then you forfeit the DOD portion. Besides the economic hurt, there is something else that really is missing there. And it's not only the individual. We're talking about costs. You can't even count the cost. You can count part of it.

Young people take their cue from older people. We want young people to enlist in the service. We want all volunteer service. We want people to enlist, to stay in the service, and to have the right attitude toward it. You don't want to have to hear the guy who served and became disabled later expressing bad feelings about what was taken away from him that he earned, or believes it.

Mr. BILIRAKIS. Thank you, Colonel. I certainly agree.

I have nothing further, Mr. Chairman, except again to thank these gentlemen, along with all the others, for taking their time at their own expense to come here today to testify.

Mr. APPLEGATE. Mr. Smith?

Mr. SMITH of New Hampshire. Well, gentlemen, thank you very much for your very valuable input submitting your testimony today.

Mr. WANAMAKER. If I may, the discussion arose by prior witnesses on the second career earning loss by retirees, and I have a study that was done by the Conference Study of the Air Force of the second career earning loss that a retiree loses. The study shows the longer that he stays in the service, the more future earnings he loses. I would like to submit this to the committee staff if they feel it might contribute to the record.

Mr. APPLEGATE. Please. We thank you very much. We will certainly utilize that. Thank you, Commander.

[The information appears on p. 112.]

Mr. APPLEGATE. Our next panel is: Mr. John C. Bollinger, Associate Legislative Director, the PVA; Mr. Richard F. Schultz, Associate National Legislative Director of the DAV; and Mr. Jim Magill, Director of the National Legislative Service, the VFW.

Mr. BILIRAKIS. Mr. Chairman, as the group is getting settled, I am required to testify before the Ways and Means Committee on the Notch Bill, and that is another thing. When we talk about inequities, most of those notch babies, if you will, are World War II veterans. And so, if you will forgive me, I would like to run there, do my testimony, and then come on back so these gentlemen would know that I'm not ignoring them for the balance of the hearing.

Mr. APPLEGATE. Thank you. We understand the schedule, and we appreciate that. We will look forward to your coming back.

Gentlemen, thank you very much for being before the committee. You are old hands at this, so you know all about what to do. I guess we'll start off with John Bollinger, since he is the first one listed here.

STATEMENT OF JOHN C. BOLLINGER, ASSOCIATE LEGISLATIVE DIRECTOR, PARALYZED VETERANS OF AMERICA

Mr. **Bollinger.** Thank you, Mr. Chairman.

It is a pleasure to appear here today and testify before this subcommittee and present the views and concerns of Paralyzed Veterans of America regarding H.R. 303.

On behalf of our membership, I wish to express our appreciation for holding this important meeting. I would specifically like to thank Congressman Bilirakis for his effort to secure an equitable resolution to the problems surrounding the payment of these benefits.

I will do my best to keep my comments brief and try not to say too much that has been said before, but I would like to go on record and say that PVA can support the basic premise of H.R. 303. We must emphasize, however, that we do have concerns regarding the potential fiscal and programmatic consequences that would result if this legislation were enacted.

I wish to emphasize that our support of H.R. 303 is the result of a careful analysis of the relationships between the various components of VA compensation and military retirement. We believe that H.R. 303 is philosophically and legally sound for the following reasons:

It is our belief that military retired pay and VA disability compensation do have two distinct and separate objectives. In the case of the military, both DOD and the Supreme Court draw distinct similarities regarding the objectives of retirement pay based on disability and retirement pay based on longevity. Both are personnel management tools designed to ensure a young and vigorous military force. In other words, they are tools which are primarily in place to benefit the overall effectiveness of the military.

VA disability compensation, whose sole objective is to compensate individual veterans who have suffered the loss or reduction of earning capacity resulting from a service-connected disability, bears no relationship to the objective of retirement pay. Consequently, PVA does not feel concurrent payments represent duplication of benefits.

We must convey our reservations regarding the potential fiscal and programmatic impact that H.R. 303 would have on existing VA programs and a limited Federal budget.

In my written testimony I have discussed the cost estimates provided by the Congressional Budget Office. In summary, these figures are of great concern to us.

Further, it was our understanding that the amount of money waived annually did represent a surplus in the military retirement trust fund, and could, therefore, be a possible source of funding for this bill.

From what we have heard today, the fund does not include any excess appropriation or transfer of funds attributable to the required waiver.

In short, the retired pay waived by disabled career retirees does not constitute a windfall to the military retirement fund and, therefore, does not appear to be an option.

In answer to your letter of invitation, Mr. Chairman, PVA is uncertain regarding the potential affect H.R. 303 will have on existing VA programs. We have submitted an independent budget that requests funds merely to maintain current services. We must reject any proposal which would result in the curtailment of any existing programs under the jurisdiction of the Veterans' Administration.

In conclusion, we agree in principle with the intent of H.R. 303; however, we find it difficult to add our vigorous support for a bill that calls for over $1 billion in outlays.

Our position on the phase-in options presented by CBO does remain open; however, we emphasize that such options cannot come at the expense of existing VA programs.

So we look forward to working closely with the subcommittee to secure eventual passage of legislation that would bring equity to military retirees, but without having a prohibitive adverse effect on VA programs.

That concludes my testimony, Mr. Chairman.

[The prepared statement of Mr. Bollinger appears on p. 115.]

Mr. APPLEGATE. Thank you very much, John.

Rick?

STATEMENT OF RICHARD F. SCHULTZ, ASSOCIATE NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS

Mr. SCHULTZ. Thank you, Mr. Chairman.

On behalf of the more than one million members of the DAV, I certainly appreciate this opportunity to appear here today, and we certainly wish to thank you, Mr. Chairman, and the members of this subcommittee for your continued support for our nation's service-connected disabled veterans. Clearly, without the support of this subcommittee, our nation's service-connected disabled veterans would not receive the benefits they now receive.

Many witnesses have appeared here today speaking to the equity of H.R. 303. I will not reiterate the many reasons why this legislation would be equitable. However, I do want to point out that the DAV believes that under no circumstances should any VA benefits programs be reduced or curtailed to achieve a cost savings for the Department of Defense.

Simply stated, let's let the Veterans' Administration pay for VA compensation and benefit programs, and the Department of Defense pay for the military retirement benefits.

One other item I would like to mention, since Congressman Smith did raise a question concerning equity, and I believe, if I understand his question, he was indicating that civil servants could receive their compensation while military retirees could not—or possibly he meant that active duty could not receive compensation at the same time they receive their active duty pay. While I certainly understand his point as far as the equity, I would like to point out that under VA compensation program, veterans are compensated for their average loss of earning capacity, and I would like to point out that there are a number of disabled veterans who have overcome their disabilities and are able to continue to work.

I must say that the DAV, as well as all other organizations, I'm sure, will oppose any efforts to means test VA compensation payments.

Thank you for the opportunity to appear here again today.

[The prepared statement of Mr. Schultz appears on p. 118.]

Mr. **Applegate**. Thank you very much.

Jim?

STATEMENT OF JAMES N. MAGILL, DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS

Mr. **Magill**. Thank you, sir.

I, too, would just like to take a few moments. We have heard a lot of talk today about the pros and the cons of this, the equity factor.

The first thing I would like to state, if I could, is that we firmly believe that military retirement and VA compensation are two totally different programs. There is constantly, it seems, an effort to have a link between the two. They should not be linked. They are independent of one another.

Second, we also firmly believe that the VA should not be required to fund DOD's retirement program. In fact, as far as the cost estimate of it, we believe that DOD should be continually providing for a full retirement. Now, if they don't have to use the money, it can be returned to the Treasury, it could be rolled over, et cetera. But they should be prepared to pay retirement for those men and women who decided to make a career out of the military.

Mr. Bilirakis brought up a very interesting point when he said that retirement programs are a continuing cost of war. We believe that, also, that the individual goes, in makes a career out of the military, and he expects that he was told he will get a retirement. Just because he was unfortunate enough to have been injured while he was on duty, he shouldn't be penalized for that.

That concludes my remarks. I will be very happy to answer any questions.

[The prepared statement of Mr. Magill appears on p. 120.]

Mr. **Penny**. I have no further questions.

The last panel: Mr. Robert Nolan, Mr. Chuck Williams, and Lt. Col. Richard Gallant, Sergeant Major Howard Frazier, both retired.

STATEMENT OF ROBERT W. NOLAN, NATIONAL EXECUTIVE SECRETARY, FLEET RESERVE ASSOCIATION

Mr. **Nolan**. Mr. Chairman, I'm Bob Nolan, the National Executive Secretary of the Fleet Reserve Association. It is our pleasure to present the views of our 150,000 career enlisted personnel, active duty and retired, on H.R. 303.

I think it is important—and this thought came to me while I sat here this morning and listened to previous witnesses—that we stop and look just a little bit of the history of this matter and understand why the law is on the books as it is today. Because while the prohibition against dual benefits became law in 1891, enlisted Navy personnel did not have an entitlement to retired pay until eight years later in 1899.

Now, Army and Marine Corps enlisted personnel had gained their retirement right in 1885; however, no enlisted person of the military was entitled to military disability retirement until the first enlisted disability retirement was established by law in 1949.

The next thing that I think we should look at is the two distinct purposes of the military disability retirement law and the VA disability law. It would be wise to clarify the diverse purpose of the military disability retirement and veterans' disability compensation laws, because even though both laws grant compensation for disability, compensation is granted under different circumstances and conditions for different reasons.

The laws governing military disability retirement define the individual's disability as it pertains to his capacity to perform full military duty. The percentage of disability is graded to measure the incapacity to perform full duty.

Furthermore, the disability must be rated at 30 percent or more disabling and be permanent in nature to qualify for full military disability retirement. Hence the military disability retirement system has provisions for a temporary disability retirement system status of a maximum of five years duration, in which the disability condition has time to stabilize.

The military retirement disability law does not take into consideration the average impairment of earning capacity that may be anticipated through the individual's lifetime as a result of the disability incurred in military service.

However, the law governing service-connected disability compensation for veterans is quite different. In considering this issue, we cannot ignore the purposes of disability compensation, and their marked difference from longevity retired pay.

First, the paramount purpose of disability compensation, whether its source be the military service or the Veterans' Administration, is to "compensate the veterans for the personal anguish caused by the permanent disability."

Accordingly, disability compensation is predicated on the disability, without regard to the veterans remaining in service, without any relation to any such subsequent service.

Third, the Veterans' Administration compensation is not an earned property right which accrues to the veteran by reason of his years of service in military service, but it is for personal injury or disease to him for service-connected disability.

Fourth, disability compensation also serves to compensate the disabled veteran for the loss of his active duty military pay caused by his early retirement.

Finally, fifth, disability compensation serves to compensate the disabled veteran for his reduced ability to compete for civilian employment.

Furthermore, in recognition of these purposes, the disability is graded by a percentage in multiples of ten, ranging from 0 to 100 percent.

From the foregoing analysis, two conclusions seem clear. First, the purposes of disability compensation sharply differ from the purposes of longevity retirement pay. Disability compensation relates solely to the disability and the resulting impairment. Second, disability compensation is not for the same period of service as longevity retired pay, but, instead, is for the disability itself.

The Fleet Reserve Association believes that there is no rational basis for the discriminating forfeiture of military retired pay by a military retiree to receive veterans service-connected disability compensation.

Statistics from the VA reveal that as of September, 1987, there were 429,776 military retirees with service-connected disabilities. A chart giving the number of the retirees and their percentage of disability follows—I request that that be included as part of my testimony.

Mr. PENNY. Sure.

Mr. NOLAN. Please note that of the 429,776 recipients, 182,325 military retirees—in other words, over 42 percent of those total—have VA disabilities rated at 20 percent or less. For these military careerists, their service-connected disability could not even be qualified or compensated for under the provisions of the military disability retirement law. Is the impairment of earning capacity for a service-connected disabled veteran any the less severe because the veteran is also a military careerist? We think not.

The Veterans' Administration's statistics reveal that as of September, 1987, the 429,776 military retirees collectively received a total of $195,884,603 a month in veterans disability compensation. And during the progress of the hearings here one of the gentlemen on the committee asked a question about the average disability for VA. In checking the VA's statistics that I have, as of last September there were 244,250 retirees; 56 percent of all the military retirees on VA disability are rated at 30 percent or less. So maybe you can draw some correlation from that and get the answer to the question you asked.

The Federal Government's rationale, we are told, is based on the argument that a person should not be compensated twice by the government for the same period of service. FRA contends that service is not the basic criterion in this issue. Service-connected disability and the degree of compensation for the impairment of earning capacity are the criteria.

A veteran does not receive VA disability compensation because he was in the service, but because he was injured in the service and the injury has impaired his earning capacity to a certain degree.

We appreciate the cost that H.R. 303's passage would entail; however, we do not believe the desire to save the government money is justifiable grounds for denying one group of citizens their rightfully earned entitlement when another group receives the same entitlement without penalty.

Frankly, the Fleet Reserve Association is puzzled as to why this matter was referred to this committee and not to the Committee on Armed Services. As we understand the issue, the cost of permitting concurrent receipt of both entitlements would impact on the Department of Defense military retirement accrual fund, and not Veterans' Administration budget.

With that, Mr. Chairman, we sincerely thank Congressman Bilirakis for the introduction of H.R. 303, and we certainly thank this committee for having hearings on the matter so that it can be fully aired.

I, for one, have been here in this capacity for 25 years representing the Fleet Reserve Association. In the 25 years, it is the first time I have had to address this subject directly with a committee holding hearings on it, and it is indeed a pleasure to have this opportunity to present our views and we thank this committee for all that it does.

Thank you, sir.

[The prepared statement of Mr. Nolan appears on p. 122.]

Mr. PENNY. Mr. Williams?

STATEMENT OF CHUCK WILLIAMS, EXECUTIVE DIRECTOR, AMERICAN EX-PRISONERS OF WAR

Mr. WILLIAMS. Mr. Chairman and Members of the subcommittee, on behalf of the 30-000-plus members of the American Ex-Prisoners of War, and the 80,000 prisoners of war that we represent, I come before you to speak on a subject that is near and dear to my heart as a retired member of the Armed Forces.

I speak to you today on the merits of H.R. 303 and why now is the right time to do the right thing. Not since the days of the patriots at Concord has the feeling of America been so strong to right the wrongs that have been done t the people of this great nation, all in the name of progress.

No other group of Americans is denied the right to collect compensation for injuries or illnesses they received in military service. It is ironic to think that a bank president can receive compensation concurrently with his retirement when he retires, a street cleaner can receive compensation concurrently with his retirement when he retires, and the civilian scientist who flies as an astronaut can receive compensation concurrently with this retirement when he retires, too; but oddly enough, the military pilot who flew the space craft that the civilian scientist flew in is deprived of what should be an inalienable right.

I could say, Mr. Chairman, that the situation I described is not fair, I could say it is not equitable, but then no one ever said that life was fair or equitable. What America did say was that if you were injured or became disabled as a result of your service to your country, you would be taken care of, and nothing was said about not taking care of you if you dedicated your life to the defense of your country and retired from one of the branches of the armed service.

This is an injustice that has been imposed upon the military of our country and needs to be corrected. You gentlemen are in a position to recognize that an inequity has been committed and to take positive action.

In salesmanship training you are trained to play up the positive aspects of the product, and to minimize the negative aspects, and I certainly would be remiss if I failed to recognize that the projected annual cost of $2 billion—and, gentlemen, I've heard some things within the last two hours or so that lead me to not be quite sure that that $2 billion is correct, but whatever the figure is,—my father taught me years ago that if you are going to dance, you've got to pay the fiddler. You just don't have any free lunches in this life. I know that is something that the American public would rather not hear, but it is a fact, and we must face it.

A review of those benefits that the military are told are part of the retirement package when they first enter the armed services, and at each of the steps on the road to retirement will show that our fighting men have been asked, for over thirty years, to bear a disproportionate share of the cuts our citizens have been asked to make.

We believe that the right thing to do is to end the inequity that has been imposed on the military retired for so many years, and allow concurrent payment of compensation, without deduction from either. We believe that the time is now.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Williams appears on p. 130.]

Mr. PENNY. Col. Gallant?

STATEMENT OF LT. COL. RICHARD J. GALLANT, U.S. ARMY (RET.)

Colonel GALLANT. Mr. Chairman, I want to express my deep appreciation to you and the distinguished members of your committee for affording me the privilege to appear here today.

I am a military retiree with over 20 years of military service. I entered the United States Army as a recruit, served as an enlisted man, non-commissioned officer, and retired as a commissioned officer. During my years of service I saw combat in Korea in 1952 and 1953, the most notable engagement being Pork Chop Hill. I saw combat in Vietnam in 1966 and 1967 serving as an advisor in the Highlands Area. The areas you may recognize are Pleiku, Kontum, Dak To, the tri-border area. I was recognized by our government for my military service, receiving several awards.

In all of my years of service I knew one basic principle: Integrity. The belief in my country and the principles for which it stands made me proud and filled me with a sense of dedication and purpose. Here I was, an ordinary citizen, being given the privilege to wear the uniform of his country and to follow in the footsteps of our forefathers who recognized that our freedom and liberty would no be achieved or maintained easily. It required sacrifice, acceptance of responsibility, and the willingness of its citizens to fight, if necessary, to preserve our way of life.

All of us do not have the opportunity to serve. This, unfortunately, deprives many of our citizens the opportunity to pay back to their country something for the privilege of living in a free and democratic republic.

Mr. Chairman, since 1975 I have been eligible to draw a VA service-connected disability compensation. However, I have not drawn one cent because of what I believe is principle. I have always believed that my military retirement has been earned, and should not be given away or traded for other entitlements or benefits. In my opinion, there are many who believe as I do. Do not be mislead by the term "non-disability retirement." The military services do not easily grant medical retirements, and the physical evaluation boards try to effect the lowest possible rating they can.

Suffice to say the military careerist—eventually a retiree and a veteran—must undergo some of the most trying of experiences in order to reach that retirement notch.

Mr. Chairman, the issue as outlined in H.R. 303 tells an often-related story told by Rudyard Kipling in his ode to a soldier called "Tommy." In essence it tells the soldier that when he is needed nothing is too good for him, but when the battle is over, those who sent him forget, throw him out, and nothing is what he gets. The story is not altogether true in the case before us today. Our country does a great deal for its military retirees and its veterans. Remember, a military retiree is a veteran.

Currently there has been a significant cutback in the medical care afforded the retiree. There is, for all practical purposes, no dental care. He is not provided nursing home care. He is not able to obtain an eye examination or eyeglasses from certain military hospitals, and the list continues to grow.

I would like to relate this to emphasize to each of you and to your colleagues in the U.S. Congress that the military retiree has, for many years, graciously accepted his or her lot as the Congress has directed. Why? The military retirees who have honorably served our country for 20 or more years and have retired because of longevity, length of service, non-disability retirement, believe in our government, support our government, and fully recognize and respect the civilian authority of the President and the United States Congress over the Armed Forces of the United States.

Further, because of this belief and our training to accept the orders issued and to do our duty, the military retiree thus becomes a little reluctant to pursue what in their hearts they believe they are entitled.

Your action to right a grievous wrong that was perpetrated against the military retiree goes many years ago, causing the retiree to effect a dollar-for-dollar offset from their retired pay in order to receive VA disability compensation is commendable. You and your co-sponsors are greatly recognized for your efforts to date to correct an injustice for the military retiree.

In summation, Mr. Chairman, I urge you and your colleagues in the House of Representatives and the United States Senate to unanimously pass H.R. 303.

A little background on this is the fact that veterans in receipt of retired pay from the private sector or civil service are not required to take a dollar-for-dollar offset from their retired pay in order to receive VA disability compensation.

However, the military retiree must offset his retired pay dollar-for-dollar. Such a situation is discriminatory and a penalty for honorably serving one's country for 20 or more years. Passage of H.R. 303 will right this wrong.

Inequity further exists in that when the veteran is entitled to special allowances for dependency, or extra allowances for special monthly compensation which are above and beyond the normal veterans' compensation rates, no such provisions exist in the retired pay of the military retiree, thereby creating another penalty for honorable service.

A few other items that have already been addressed many times I would like to skip over and just close by saying that to deny passage of H.R. 303 is to say to those who have retired or will retire, "Serve your country honorably for 20 or more years. Give it your youth and most productive years. Go into combat once, twice, or more. Place your life on the line. Sacrifice your family. Go into the civilian world after your service at an age that most business do not want. Receive a retirement that won't allow you to raise a family with all of its economic requirements. You will not receive benefits that others receive because you voluntarily elected to give the best years of your life and those of your family to your country. Also, if you elect to make the Armed Services your career, be prepared to be denied what you expect upon retirement."

Mr. Chairman, that completes my presentation. Please accept my appreciation to you and your committee for undertaking this issue.

[The prepared statement of Colonel Gallant appears on p. 132.]

Mr. APPLEGATE. Sergeant Major?

STATEMENT OF SGT. MAJ. HOWARD W. FRAZIER, U.S. ARMY (RET.)

Sergeant Major FRAZIER. Mr. Chairman and members of this subcommittee of the Veterans' Affairs Committee, my name is Howard Frazier and I live in Alexandria, Virginia. I was born and raised in San Luis Obispo, California. I graduated there from high school, and also attended junior college and California Polytechnic College there after World War II on the G.I. Bill.

I am 61 years of age, and never, in any of my wildest dreams, did I ever believe I would some day be appearing as a witness before the U.S. Congress. It is, for me, indeed a great honor and a privilege. At the same time, I also sincerely believe it is for an honorable and just purpose.

I am a proud retired U.S. Army Sergeant Major—E-9—with over 30 years active service. I served in the combat engineers, infantry, artillery, and the signal corp. The last half of my career was in the U.S. Army Security Agency and in military intelligence, which included 27 months in Moscow, U.S.S.R., as an assistant Army attache during a period in 1972 to 1974.

I am a veteran of World War II, Korea, and Vietnam. I have never visited the Vietnam Memorial on the Mall because I am afraid I would weep.

I retired on 30 November, 1978, with 10 percent service-connected disability, which was recently upgraded to 20 percent, and is currently being reviewed by the Veterans' Administration for possible additional upgrading. My disabilities are spinal and hearing problems caused while on active duty.

In my opinion, H.R. 303 is and has been long over due for the veterans who have sacrificed many things in order to serve 20 or more years in the military service of this great country.

It has been said the U.S. Government gives with one hand and takes it away with the other. I believe this is true in the cases of veterans who have served over 20 years, receive retired pay from the military service, and are also awarded a service-connected disability compensation, which is then subtracted from the veteran's military retired pay and reissued by the Veterans' Administration. To me this is like robbing Peter to pay Paul.

I believe that it is a sad commentary on the part of the U.S. Government for them to recruit young men and women of this country to join the military service, encourage them to make a career of it, promise them retired pay after 20 or more years of service—but, wait a minute. If you are injured in the line of duty during your military career and awarded service-connected disability compensation, it will be subtracted from your retired pay and re-issued to you by the VA. This kind of information would never appear on any military poster that I know of—recruiting poster, that is.

What is right is right, and what is fair is fair. I believe H.R. 303 is both right and fair and will right a wrong that has been unfair to the American veteran retiree for too long. If H.R. 303 is not passed into law I do not believe the wishes, desires, and feelings that President Abraham Lincoln had for the veterans of this country would be fulfilled. I hope President Reagan feels the same way.

I was a member of the Second Infantry Division at Ft. Lewis, Washington. In 1956 we had a master sergeant named Thompson who had fought with the Second Division in both World War I and World War II. He wore World War I wound chevrons on the lower left sleeve of his jacket. He was known through Ft. Lewis as Mr. Second Infantry Division—God bless him.

While walking on post one day he met a young second lieutenant coming from the opposite direction. Master Sergeant Thompson, with evidently something else on his mind, strolled on by the young lieutenant without rendering a proper salute. The young lieutenant calls Thompson back, asking him if he had saluted him. Thompson, looking all about the immediate area, replied, "No. No. It wasn't me. It must have been someone else."

At this time, unlike Master Sergeant Thompson, I would like to salute all of you on this committee, and while doing so it is with the fond hope that all of you live to be 303 years old and the last words you hear are from the disabled American veteran retirees of this country with a loud, resounding "thank you" for passing H.R. 303.

Thank you, Mr. Chairman.

[The prepared statement of Sergeant Frazier appears on p. 136.]

Mr. PENNY. I thank you. I don't have any questions. I don't have any other questions, but I know Mr. Bilirakis has questions, and he will submit them. If he does so, we would ask you to respond to them in writing. We will also let other committee members submit questions.

With that, this panel is dismissed.

Without objection, we will leave the record open for a period of ten days should other members or organizations with to submit testimony for the record.

With that, we have completed our panels for this morning, and the meeting stands adjourned.

[Whereupon, at 12:09 p.m., the committee was adjourned.]

APPENDIX

I

100th CONGRESS
1st Session

H. R. 303

To amend section 3104 of title 38, United States Code, to permit certain service-connected disabled veterans who are retired members of the Armed Forces to receive compensation concurrently with retired pay, without deduction from either.

IN THE HOUSE OF REPRESENTATIVES

January 6, 1987

Mr. Bilirakis (for himself, Mr. Bennett, and Mr. Lowry of Washington) introduced the following bill; which was referred to the Committee on Veterans' Affairs

June 16, 1987

Additional sponsors: Mr. St Germain, Mr. Fuster, Mr. Murphy, Mr. Lagomarsino, Mr. Donald E. Lukens, Mr. Mfume, Mr. Hayes of Illinois, Mr. Young of Florida, Mr. Fazio, Mrs. Bentley, Mr. Towns, Mr. Roe, Mr. Garcia, Mrs. Vucanovich, Mr. Watkins, Mr. Pepper, Mr. Wortley, Mr. DeWine, Mr. Dyson, Mr. Emerson, Mr. Fish, Mr. Martinez, Ms. Kaptur, Mr. Saxton, Mr. Porter, Mr. Nielson of Utah, Mr. Lujan, Mr. Weldon, Mr. Gingrich, Mr. Johnson of South Dakota, Mr. Young of Alaska, Mr. Hall of Ohio, Mr. Lewis of Florida, Mr. Mica, Mr. Sunia, Mr. Jeffords, Mr. McDade, Mr. Rahall, Mr. Dornan of California, Mr. Anderson, Mr. Frank, Mr. Shaw, Mr. Skeen, Mr. Berman, Mr. Davis of Michigan, Mr. Bevill, Mr. Brown of California, Mr. Borski, Mr. Panetta, Mr. Horton, Mr. Frost, Mr. Bereuter, Mr. Duncan, Mr. Oberstar, Mr. McEwen, Mr. Barnard, Mr. Akaka, Mr. DeFazio, Mr. Rowland of Connecticut, Mr. Mavroules, Mr. Jontz, Mr. Wilson, Mr. Packard, Mr. Whittaker, Mr. Kennedy, Mr. Richardson, Mr. Chappell, Mr. Hutto, Mr. Hefley, Ms. Snowe, Mr. Hochbrueckner, Mr. Gallegly, Mr. Coelho, Mr. Wise, Mr. Bustamante, and Mr. Wolf

A BILL

To amend section 3104 of title 38, United States Code, to permit certain service-connected disabled veterans who are retired members of the Armed Forces to receive compensation concurrently with retired pay, without deduction from either.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3104(a) of title 38, United States Code, is amended by adding at the end thereof the following: "Notwithstanding the preceding sentence, emergency officers', regular, or reserve retirement pay may be paid to any veteran concurrently with compensation for any service-connected disability, without deduction from either the retirement pay or the compensation; however, nothing in this sentence shall permit payment of retirement pay and of compensation based upon the same disability.".

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OPENING STATEMENT

THE HONORABLE DOUGLAS APPLEGATE, CHAIRMAN

GOOD MORNING LADIES AND GENTLEMEN. THE SUBJECT OF OUR HEARING THIS MORNING IS H.R. 303, A BILL THAT WOULD PERMIT CONCURRENT RECEIPT OF MILITARY RETIREMENT PAY AND VA DISABILITY COMPENSATION. THE BILL WAS INTRODUCED BY ONE OF THIS SUBCOMMITTEE'S MOST DISTINGUISHED MEMBERS, THE HONORABLE MICHAEL BILIRAKIS OF FLORIDA.

THE BILL AS INTRODUCED WOULD AMEND TITLE 38, UNITED STATES CODE, TO ALLOW CONCURRENT PAYMENT OF VA SERVICE-CONNECTED DISABILITY COMPENSATION AND FULL MILITARY RETIREMENT PAY. UNDER CURRENT LAW, A MILITARY RETIREE MUST WAIVE A PORTION OF HIS OR HER RETIREMENT PAY IN ORDER TO RECEIVE THE NON-TAXABLE DISABILITY COMPENSATION.

I AGREED TO HOLD THIS HEARING AT MIKE'S REQUEST, BUT I WANT TO STATE UP FRONT THAT I HAVE RESERVATIONS ABOUT SEVERAL ASPECTS OF THIS BILL, INCLUDING ITS COST. THE CONGRESSIONAL BUDGET OFFICE HAS ESTIMATED ENACTMENT OF H.R. 303 WOULD REQUIRE BUDGET AUTHORITY IN EXCESS OF $2 BILLION PER YEAR AND OUTLAYS OF OVER $1 BILLION PER YEAR. IN THIS REGARD, I ASKED STAFF OF THE CONGRESSIONAL BUDGET OFFICE TO BE HERE THIS MORNING TO ANSWER ANY QUESTIONS THAT MAY ARISE REGARDING THE BASIS FOR THIS ESTIMATE.

I INDICATED IN MY LETTER OF INVITATION A DESIRE THAT WITNESSES ADDRESS THE ISSUE OF BUDGETARY IMPACT. MOST OF THE STATEMENTS I HAVE SEEN INDICATE THAT, SINCE THE MAJOR PORTION OF THE COST OF THIS BILL WOULD ULTIMATELY BE BORNE BY THE DEPARTMENT OF DEFENSE, THE COMMITTEE SHOULD NOT CONCERN ITSELF WITH THE FUNDING ISSUE. I THINK THIS IS AN IRRESPONSIBLE STATEMENT, AND CERTAINLY ONE WITH WHICH THE COMMITTEE LEADERSHIP DOES NOT AGREE.

FOR ANYONE WHO DOES NOT ALREADY KNOW IT, IF THE COMMITTEE ON VETERANS AFFAIRS' WERE TO REPORT LEGISLATION OF THIS NATURE THAT EXCEEDS THE ALLOCATION OF NEW BUDGET AUTHORITY SET FORTH IN THE BUDGET RESOLUTION, IT WOULD NECESSARILY HAVE TO ALSO REPORT AN EQUAL AMOUNT OF SAVINGS TO OFFSET THE COST OR BE IN VIOLATION OF THE BUDGET ACT, NOT TO MENTION THE SUMMIT AGREEMENT, AND GRAMM-RUDMAN. IT WOULD BE SUBJECT TO A POINT OF ORDER ON THE FLOOR. THE QUESTION WOULD THEN BE, WHICH PROGRAMS DO WE, THE VETERANS' AFFAIRS COMMITTEE, CUT? CERTAINLY, WE COULD NOT RECOMMEND CUTS IN THE DEPARTMENT OF DEFENSE BUDGET. THAT LEAVES US NO OTHER CHOICE BUT VA PROGRAMS. IT SEEMS, FOR THE MOST PART, THAT THE BILL'S SUPPORTERS HAVE BEEN AVOIDING THIS ISSUE, BUT PUT SIMPLY, IT IS AN ISSUE THAT WILL NOT GO AWAY, NO MATTER HOW MUCH IT MAY BE AVOIDED.

NOTWITHSTANDING THE CONCERNS I AND OTHERS HAVE, I FEEL THAT, IN VIEW OF THE LARGE NUMBER OF CO-SPONSORS WHO HAVE SIGNED ON, AND THE NUMBER OF LETTERS I HAVE RECEIVED, WE OUGHT TO HEAR MORE ABOUT THIS BILL. I LOOK FORWARD WITH GREAT INTEREST TO THE TESTIMONY WE WILL HEAR, ESPECIALLY WITH REGARD TO THE BILL'S IMPACT ON THE BUDGET AND THE DEFICIT.

STATEMENT OF THE HONORABLE MICHAEL BILIRAKIS
SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
APRIL 14, 1988

MR. CHAIRMAN, I WISH TO FIRST EXTEND MY DEEP APPRECIATION TO YOU FOR YOUR OUTSTANDING LEADERSHIP AND FOR YOUR DECISION TO SCHEDULE THIS HEARING ON H.R. 303 BEFORE THIS SUBCOMMITTEE UPON WHICH I AM HONORED TO SERVE.

AS THE SPONSOR OF H.R. 303, I AM REQUESTING YOUR ASSISTANCE IN THIS EFFORT TO ELIMINATE THE FUNDAMENTAL INEQUITY IN CURRENT LAW WHICH REQUIRES MILITARY RETIREES TO PAY FOR THEIR VA DISABILITY COMPENSATION OUT OF THEIR MILITARY RETIREMENT. AS YOU KNOW, A 19TH CENTURY LAW REQUIRES MILITARY RETIREES TO WAIVE DOLLAR FOR DOLLAR THE AMOUNT OF THEIR MILITARY RETIREMENT EQUAL TO THE AMOUNT OF THEIR VA DISABILITY COMPENSATION.

CAREER MILITARY RETIRED VETERANS ARE THE ONLY GROUP OF FEDERAL RETIREES WHO ARE REQUIRED TO WAIVE THEIR RETIREMENT PAY IN ORDER TO RECEIVE VA DISABILITY. I FIND THIS 19TH CENTURY WAIVER REQUIREMENT ENTIRELY INEQUITABLE BECAUSE A MILITARY RETIREE IS UNJUSTLY PENALIZED BY THE FACT THAT HE CHOOSE THE MILITARY SERVICE AS HIS CAREER. IN EFFECT, THE MILITARY RETIREE IS SINGLED OUT SOLELY BECAUSE OF HIS CAREER CHOICE.

IT IS DEEPLY DISTURBING THAT THIS BRAVE GROUP OF DISABLED RETIRED VETERANS ARE THE ONLY GROUP OF FEDERAL RETIREES WHO CANNOT COLLECT THEIR RETIREMENT FOR HAVING SERVED THEIR COUNTRY FOR TWENTY YEARS OR MORE AND ALSO RECEIVE THEIR VA DISABILITY FOR A SERVICE-CONNECTED INJURY DEPENDING ON THEIR PERCENTAGE OF DISABILITY. IF THE SERVICEMEMBER DOES NOT GIVE UP HIS MILITARY RETIREMENT HE FORGOES ALL DISABILITY BENEFITS FROM THE VETERANS ADMINISTRATION.

H.R. 303 HAS RECEIVED WIDESPREAD BIPARTISAN SUPPORT FROM 220 OF OUR COLLEAGUES. SENATOR SPARK MATSUNAGA OF HAWAII HAS JUST RECENTLY INTRODUCED THE SENATE COUNTERPART, S. 2120, WHICH CURRENTLY HAS 8 COSPONSORS.

MY BILL HAS BEEN ENDORSED BY 17 VETERANS ORGANIZATIONS INCLUDING THE AMERICAN LEGION, DISABLED AMERICAN VETERANS, VETERANS OF FOREIGN WARS, UNIFORMED SERVICES DISABLED RETIREES, MILITARY ORDER OF THE PURPLE HEART, NON-COMMISSIONED OFFICERS ASSOCIATION, RESERVE OFFICERS ASSOCIATION, FLEET RESERVE ASSOCIATION, THE RETIRED ENLISTED ASSOCIATION, CATHOLIC WAR VETERANS, AIR FORCE SERGEANTS ASSOCIATION, THE JEWISH WAR VETERANS, NATIONAL MILITARY FAMILY ASSOCIATION, NATIONAL ASSOCIATION FOR UNIFORMED SERVICES, AMVETS, THE RETIRED OFFICERS ASSOCIATION, AND THE AMERICAN RETIREES ASSOCIATION.

I AM PLEASED TO SAY THAT MANY OF THESE DEDICATED GROUPS ARE HERE THIS MORNING TO SPEAK OF THEIR SUPPORT FOR THE ENACTMENT OF H.R. 303 AND THE ELIMINATION OF THE OFFSET BETWEEN MILITARY RETIRED PAY AND VA DISABILITY. THIS ALLIANCE OF VETERANS ORGANIZATIONS AND 220 REPRESENTATIVES IN THE HOUSE ASSERT THAT THE STATUTORY OFFSET IS AN INJUSTICE TO THOSE VETERANS WHO HAVE SUSTAINED A SERVICE-CONNECTED DISABILITY DURING THEIR MILITARY CAREER. AND IF WE BELIEVE IN THE CONCEPT OF A REPUBLIC, THEN THOSE 220 REPRESENTATIVES SPEAK FOR A MAJORITY OF THE AMERICAN PEOPLE.

GIVEN THIS OVERWHELMING SUPPORT IN CONGRESS AND IN THE VETERANS COMMUNITY, CONGRESS SHOULD BE COMPELLED TO TAKE ACTION ON THIS MATTER. IT IS MY HOPE THAT THIS HEARING WILL SERVE AS A FIRST STEP IN THAT PROCESS.

AT THE CONCLUSION OF THIS MORNING'S HEARING, I WOULD LIKE THE COMMITTEE TO JUST REMEMBER ONE THING: H.R. 303 IS SIMPLY A MATTER OF EQUITY. IT IS OUR DUTY AS MEMBERS OF CONGRESS TO ELIMINATE INEQUITABLE LAWS, SUCH AS THE OFFSET IN CURRENT LAW. H.R. 303 WILL HELP US FULFILL THIS DUTY AND TREAT ALL FEDERAL RETIREES IN A FAIR AND EVENHANDED MANNER.

LET ME GIVE YOU JUST A FEW EXAMPLES OF OTHER FEDERAL PERSONNEL RECEIVING DISABILITY PAYMENTS AND RETIREMENT. FOR EXAMPLE, IT IS POSSIBLE TO HAVE TWO FEDERAL RETIREES WITH THE SAME SERVICE-CONNECTED DISABILITY SUFFERED IN THE SAME BATTLE WHO

HAVE WORKED THE SAME NUMBER OF YEARS IN FEDERAL SERVICE TREATED DIFFERENTLY. WHY? BECAUSE ONE SERVED ALL HIS YEARS IN THE MILITARY AND THE OTHER SERVED ONLY TWO YEARS IN THE MILITARY AND THE REMAINDER IN CIVIL SERVICE.

THE MILITARY RETIREE MUST PAY FOR HIS DISABILITY BENEFITS FROM HIS RETIREMENT CHECK. BUT THE CIVIL SERVICE RETIREE MAY RECEIVE BOTH HIS CIVIL SERVICE RETIREMENT AND HIS VA DISABILITY IN SPITE OF THE FACT THAT HIS MILITARY SERVICE IS INCLUDED IN CALCULATING HIS CIVIL SERVICE RETIREMENT AND IN SPITE OF THE FACT THAT HE HAD BEEN RECEIVING VA DISABILITY DURING ALL THE YEARS AS A CIVIL SERVANT.

IN ANOTHER CASE, TWO VETERANS COULD BOTH BE RATED 100% SERVICE-CONNECTED DISABLED AND BOTH RECEIVE THE SAME AMOUNT OF VA DISABILITY EVEN THOUGH ONE SERVED FOR TWO YEARS IN THE MILITARY AND THE OTHER SERVED FOR TWENTY. THE TRAVESTY IN THIS SITUATION IS THAT THE DISABLED CAREER VETERAN HAS HIS ENTIRE RETIREMENT ANNUITY OFFSET BY HIS VA DISABILITY COMPENSATION.

I'M ANXIOUS THAT OUR SUBCOMMITTEE CLOSELY SCRUTINIZE THIS POLICY AND THE RATIONALE FOR TREATING CAREER MILITARY DIFFERENTLY FROM THE SHORT-TERM VETERAN. AS I STATED A FEW MOMENTS AGO, AN INDIVIDUAL WITH ONLY A FEW YEARS OF SERVICE CAN CONTINUE A CAREER IN PRIVATE OR GOVERNMENT EMPLOYMENT (WHILE AT THE SAME TIME RECEIVE VA DISABILITY COMPENSATION), THEN APPLY HIS MILITARY SERVICE TOWARD CIVIL SERVICE, AND RECEIVE RETIREMENT PAY CONCURRENTLY WITH VA DISABILITY BENEFITS.

PROBABLY THE MOST FRUSTRATING FACT TO ME IS THAT WE HAVE ASKED THESE BRAVE MEN AND WOMEN TO SERVE DURING A TIME OF NEED, UNDER TREMENDOUS DURESS AND DANGER, AND YET THE GOVERNMENT FAILS TO ABIDE BY ITS COMMITMENT TO PROVIDE FULL MILITARY RETIREMENT. HOW CAN WE POSSIBLY EXPECT TO MAINTAIN A VIABLE NATIONAL DEFENSE IF SERVICEMEMBERS REALIZE THAT IF THEY EXPERIENCE A SERVICE-CONNECTED DISABILITY THEY CANNOT RECEIVE VA DISABILITY AND MILITARY RETIRED PAY? MILITARY PERSONNEL CANNOT PROTECT THEMSELVES FROM LOSS OF INCOME THROUGH THE PURCHASE OF PRIVATE DISABILITY INSURANCE OR SEEK REDRESS THROUGH LEGAL ACTION AGAINST THE U.S. GOVERNMENT. THE SUBCOMMITTEE SHOULD CAREFULLY REVIEW THIS MATTER WITH REGARD TO THE OFFSET'S EFFECT ON OUR NATION'S ABILITY TO RECRUIT AND RETAIN QUALIFIED, MILITARY CAREER PERSONNEL.

AS THE SPONSOR OF THIS LEGISLATION, I HAVE ENCOUNTERED MANY ARGUMENTS FROM OPPONENTS WHICH I WOULD LIKE TO BRIEFLY ADDRESS. WITH REGARD TO THE STATEMENT THAT MY BILL WOULD ENABLE RETIRED VETERANS TO "DOUBLE DIP", I CONTEND THAT THERE WOULD NOT BE ANY DUPLICATION OF BENEFITS IF H.R. 303 WERE ENACTED. MY BILL WOULD NOT ENABLE THE RETIRED DISABLED VETERAN TO RECEIVE TWO PAYMENTS FOR THE SAME DISABILITY. DISABILITY COMPENSATION AND DOD LONGEVITY PAY ARE ENTIRELY SEPARATE PROGRAMS WITH ENTIRELY DIFFERENT PURPOSES. RETIREMENT PAY IS EARNED FOR TWENTY YEARS OR MORE OF FAITHFUL SERVICE AND IS AN INDUCEMENT TO ATTRACT AND RETAIN QUALIFIED PERSONNEL TO THE MILITARY AS A CAREER.

VA DISABILITY COMPENSATION, ON THE OTHER HAND, WAS ESTABLISHED TO REPLACE THE LOSS OF EARNINGS ATTRIBUTABLE TO A SERVICE-CONNECTED OR SERVICE-AGGRAVATED INJURY. DISABILITY COMPENSATION ALSO SERVES TO COMPENSATE THE DISABLED VETERAN FOR HIS REDUCED ABILITY TO COMPETE FOR CIVILIAN EMPLOYMENT.

IT IS QUITE CLEAR TO ME THAT DOD LONGEVITY PAY AND VA DISABILITY BENEFITS ARE VASTLY DIFFERENT: THE FORMER RELATES TO LENGTH OF HONORABLE SERVICE IN THE ARMED FORCES AND THE LATER RELATES TO DISABILITY AND SUBSEQUENT LOSS OF EARNING POTENTIAL.

DISABLED MILITARY RETIREES OFTEN ARE SOLELY DEPENDENT UPON VA DISABILITY AS MANY CANNOT EARN AN INCOME ELSEWHERE. STATISTICS CLEARLY INDICATE THAT DISABLED VETERANS HAVE A MUCH LOWER EARNING POTENTIAL THAN THE CIVILIAN FORCE. THEREFORE, THESE SERVICEMEN WHO IN THE LINE OF DUTY BECAME DISABLED ARE SINGLED OUT AS THE ONLY GROUP OF FEDERAL RETIREES WHO CANNOT COLLECT BOTH THEIR RETIREMENT AND VA DISABILITY. AGAIN, WHY DO WE COMPENSATE THE NON-CAREER VETERAN FOR DISABILITIES AND NOT THOSE WHO HAVE SACRIFICED AND SERVED THEIR COUNTRY THE LONGEST?

TO CLEARLY DEMONSTRATE THE INEQUITABLE CONSEQUENCE OF THE OFFSET, HOW CAN WE JUSTIFY WHY A SERVICEMEMBER WHO RECEIVES HEROISM PAY AS PART OF HIS RETIRED PAY FOR A DISTINGUISHED SERVICE CROSS, SILVER STAR, OR SOLDIERS MEDAL MUST WAIVE THAT HEROISM PAY. IN THIS INSTANCE, THE SOLDIER WHO HAS BEEN AWARDED

FOR AN EXTRAORDINARY ACT OF HEROISM IS STRIPPED OF HIS RECOGNITION AND MUST ALSO FUND HIS VA DISABILITY OUT OF THIS AWARD.

AND CONVERSELY, THE VETERAN WHO RECEIVES DEPENDENCY ALLOWANCE AND AID AND ATTENDANCE ALLOWANCE AS PART OF HIS VA DISABILITY MUST WAIVE DOLLAR FOR DOLLAR HIS MILITARY RETIREMENT. REMEMBER HOW PLEASED WE ALL WERE THAT WE WERE ABLE TO PROVIDE A COST-OF-LIVING INCREASE TO RECIPIENTS OF VA DISABILITY? WELL THE ACTUAL IMPACT OF CONGRESS' ACTION WAS TO INCREASE THE AMOUNT OF MILITARY RETIREMENT THAT THE DISABLED RETIRED VETERAN MUST WAIVE EACH MONTH IN ORDER TO RECEIVE HIS VA DISABILITY.

I AM CONVINCED THAT THERE IS NO SOUND POLICY FOR NOT ALLOWING RETIRED CAREER MILITARY TO COLLECT THEIR RETIREMENT PAY AND THEIR VA DISABILITY COMPENSATION. THE COST ASSOCIATED WITH H.R. 303 IS PERHAPS THE ONLY LOGICAL IMPEDIMENT TOWARD ENACTMENT. COST ESTIMATES HAVE BEEN VARIED: FROM $2 BILLION TO $900 MILLION. BEFORE US THIS MORNING, DOD WILL ESTIMATE A COST OF A MINIMUM OF $1.2 TO A MAXIMUM OF $1.2 BILLION PER YEAR.

I MUST ADMIT THAT THE PROCESS OF OBTAINING ACCURATE DATA ON THE COST OF H.R. 303 AND THE ACTUAL NUMBER OF AFFECTED RETIRED VETERANS HAS BEEN FRUSTRATING AT BEST. THE DIFFERING FIGURES THAT I HAVE RECEIVED FROM THE DEPARTMENT OF DEFENSE, FROM THE VETERANS ADMINISTRATION AND FROM THE CONGRESSIONAL BUDGET OFFICE ALL DIFFER. HOW CAN OPPONENTS POSSIBLY SHOOT DOWN THIS

EQUITABLE PROPOSAL WHEN ACCURATE COST FIGURES ARE NOT AVAILABLE? IN ADDITION, NONE OF THE COST ESTIMATES HAVE INCORPORATED THE RETURN TO THE U.S. TREASURY RESULTING FROM THE FACT THAT MILITARY RETIREMENT IS FULLY TAXABLE.

I AM SUBMITTING WHAT I VIEW AS A RATHER CONSERVATIVE ESTIMATE FROM THE JOINT COMMITTEE ON TAXATION WHICH CONCLUDES THAT $100 MILLION WOULD BE RETURNED IN INCOME TAX TO THE TREASURY IF H.R. 303 WERE ENACTED. THE CONGRESSIONAL BUDGET OFFICE WILL NOT PROVIDE FIGURES ON THE RETURN TO THE TREASURY. PERHAPS THE CBO REPRESENTATIVE HERE THIS MORNING WILL BE ABLE TO EXPLAIN WHY THESE FIGURES CANNOT BE MADE AVAILABLE AS I HAVE REQUESTED. IN GENERAL, APPROXIMATELY 20 TO 30% WOULD BE RETURNED AS TAXABLE INCOME.

IN CLOSING, I WISH TO OUTLINE THE SITUATION OF A 100% DISABLED VETERAN OF THREE WARS: WORLD WAR II, THE KOREAN CONFLICT AND VIETNAM. IN ADDITION TO HIS THREE PERIODS OF SERVICE, COLONEL JAMES LINDBERG HUGHES, USAF, WAS A PRISONER OF WAR FOR SIX YEARS IN THE "HANOI HILTON" DURING THE VIETNAM CONFLICT. COLONEL HUGHES SERVED THIS NATION IN THE MOST HONORABLE TERMS FOR 25 YEARS AND 2 MONTHS. HOW CAN WE JUSTIFY THE FACT THAT COLONEL HUGHES MUST WAIVE HIS 60% OF HIS MILITARY RETIREMENT IN ORDER TO RECEIVE VA DISABILITY FOR HIS SERVICE-CONNECTED DISABILITIES INCURRED DURING HIS SERVICE IN THREE WARS AND HAVING BEEN A FORMER PRISONER OF WAR? THAT TO ME IS UNCONSCIONABLE.

THERE ARE COUNTLESS OTHER DISTINGUISHED RETIRED VETERANS WHO MUST ALSO FUND THEIR VA DISABILITY FROM THEIR MILITARY RETIREMENT. THE PRESENT LAW IS UNJUST, UNREALISTIC AND SIMPLY DOES NOT ADEQUATELY COMPENSATE THOSE BRAVE SERVICEMEMBERS WHO HAVE DEFENDED OUR NATION.

MR. CHAIRMAN, I THANK YOU FOR YOUR ASSISTANCE AND YOUR LEADERSHIP. THIS IS INDEED A MOMENTOUS EVENT FOR THE HUNDREDS OF THOUSANDS OF RETIRED VETERANS AFFECTED BY THIS DISCRIMINATORY LAW AND I THANK YOU FOR YOUR DECISION TO HOLD A HEARING ON THIS VITAL ISSUE.

AGAIN, I LOOK FORWARD TO WORKING WITH YOU ON H.R. 303 AND URGE YOUR CONSIDERATION OF SOME AGREEMENT ON THIS MATTER SO THAT RETIRED VETERANS WHO SHOULD BE REWARDED RATHER THAN PENALIZED FOR HAVING SERVED THEIR COUNTRY FOR 20 PLUS YEARS CAN RECEIVE THE COMPENSATION THEY HAVE EARNED.

THANK YOU MR. CHAIRMAN.

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100TH CONGRESS, 1ST SESSION

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Congress of the United States
JOINT COMMITTEE ON TAXATION
1015 LONGWORTH HOUSE OFFICE BUILDING
Washington, DC 20515-6453

DAVID H. BROCKWAY
CHIEF OF STAFF
RANDALL D. WEISS
DEPUTY CHIEF OF STAFF

FEB 16 1988

Honorable Spark M. Matsunaga
United States Senate
Washington, DC 20510

Dear Senator Matsunaga:

In response to your request, we have prepared a revenue estimate of a bill which would eliminate the statutory offset between military retirement pay and veterans' disability compensation. The following estimate shows the estimated increases in Federal tax receipts that would be expected if the proposal were enacted. We have assumed an effective date of October 1, 1988. The estimate is consistent with outlay effects which have been provided by the Congressional Budget Office.

Fiscal Years (Billions of Dollars)					
1989	1990	1991	1992	1993	Total
0.1	0.1	0.1	0.1	0.1	0.6

If we can be of any additional help in this matter, please feel free to contact us.

Sincerely,

Randall D. Weiss

Randall D. Weiss

MANUEL LUJAN, JR.
1ST DISTRICT, NEW MEXICO

COMMITTEES
INTERIOR AND INSULAR AFFAIRS
SCIENCE AND TECHNOLOGY

Congress of the United States
House of Representatives
Washington, D.C. 20515

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TESTIMONY SUBMITTED TO THE VETERANS' AFFAIRS SUBCOMMITTEE ON COMPENSATION AND EMPLOYEE BENEFITS ON H.R. 303

BY THE
HONORABLE MANUEL LUJAN, JR. (R-NM)
MEMBER OF CONGRESS
APRIL 12, 1988

Thank you, Mr. Chairman, for holding this hearing today on H.R. 303, legislation of great importance to many of our veterans. I appreciate this opportunity to join my colleagues today who support this much needed measure.

Mr. Chairman, this legislation introduced by my good friend Mike Bilirakis, addresses a serious inequity in our laws where disability compensation is concerned. I think, Mr. Chairman, there must be some misunderstanding where the term disability compensation comes from. Military retirees are being forced to waive a portion of the retirement they have earned for length of career service, simply to receive the VA disability compensation intended to compensate them for injuries they sustained as military personnel.

I can't think of a better example of mixing apples and oranges than this. We are using service connected disability compensation to double as retirement pension: two different things. Then, Mr. Chairman, we don't even apply this policy consistently. A military retiree must choose between his disability compensation and his military retirement in that amount. Yet, this theory does not apply to a non-military government retiree who also qualifies for disability compensation stemming from a war wound or other service connected disability. It is just not fair, Mr. Chairman, and I cannot believe that was what we intended.

For this reason, I would like to see this matter addressed in this Congress. There is broad support in this House for correcting this unfair provision in our law, that discriminates against military personnel who have suffered a disability in the service of our country. I believe we have a responsibility to right this wrong.

In your letter of invitation to this hearing, Mr. Chairman, you request that witnesses like myself suggest veteran programs to be cut, to allow these folks to receive their military retirement. Since it is my understanding that the retirement funds in question come entirely out of the Department of Defense retirement account, it is unclear to me why this directly affects veteran's programs.

In closing, Mr. Chairman, it is my hope that H.R. 303 is given the consideration it deserves in this Congress. No doubt, this Committee will hear much emotional and compelling testimony today, setting out for you the impact this provision in our law has on the affected veterans. Ironically, Mr. Chairman, this is one situation where the inconsistency in our law and its results are compelling enough to stand alone as an argument for addressing this wrong.

Again, I appreciate your subcommittee holding this hearing today on H.R. 303, Mr. Chairman, for until Congress changes this law, we are perpetuating this unfairness in our treatment of those who served us and suffered for it.

Thank you.

REMARKS OF HON. BOB MCEWEN

WE MEET TODAY TO HEAR TESTIMONY ON A BILL THAT HAS THE NAME OF MIKE BILIRAKIS FIRMLY EMBOSSED UPON IT. IT IS A BILL THAT HAS WIDESPREAD SUPPORT AMONG VETERANS ORGANIZATIONS AND ORGANIZATIONS REPRESENTING MANY ACTIVE DUTY AND RETIRED MILITARY PERSONNEL. HOWEVER, IT HAS FIRM OPPOSITION BY THE VA AND BY THE DEFENSE ESTABLISHMENT.

THE SUBJECT OF DUAL RETIREMENT PAY FROM THE MILITARY AND COMPENSATION FROM THE VA IS ONE OF LONGSTANDING. TODAY WE WILL EXPLORE IT IN DEPTH IN WHAT I BELIEVE IS THE FIRST HOUSE OF REPRESENTATIVES' HEARING ON THIS SPECIFIC MATTER. OUR WITNESSES WILL GO INTO THE PROS AND CONS, AND THE NET RESULT WILL BE A BETTER UNDERSTANDING ON OUR PART OF A COMPLEX ISSUE.

MR. CHAIRMAN, WITH EQUAL FERVOR, WE WILL HEAR TODAY THAT THIS IS A MATTER OF PRINCIPLE. BOTH THOSE IN FAVOR OF H.R. 303 AND THOSE OPPOSED TO IT WILL SAY THIS. WE WILL HEAR THAT THE BILL IS VERY COSTLY, AND IT IS. IT HAS A PRICE TAG OF SOME $2 BILLION A YEAR. BUT WE WILL ALSO HEAR THAT THE COST SHOULD NOT DETER FAVORABLE ACTION BECAUSE WE ARE DEALING WITH A MATTER OF EQUITY AND FAIRNESS.

WE WILL HEAR THAT A RETIRED CIVIL SERVANT CAN RECEIVE RETIRED PAY AND VA COMPENSATION AT THE SAME TIME. OTHERS WILL SAY THAT WHILE THIS IS TRUE IT IS ALSO TRUE THAT THE CIVIL SERVANT PAID INTO A RETIREMENT FUND WHILE A SERVICE PERSON DID NOT. THAT ARGUMENT WILL THEN BE COUNTERED BY A STATEMENT THAT FOR MANY YEARS MILITARY PAY WAS VERY LOW AS COMPARED TO CIVILIAN SALARIES AND THAT BECAUSE OF THAT RETIREMENT CONTRIBUTIONS WERE NOT REQUIRED.

MR. CHAIRMAN, WE WILL ALSO HEAR THAT THIS APPEARS TO BE AN ISSUE THAT ONLY RELATES TO THOSE COVERED BY H.R. 303. IN REBUTTAL, WE WILL BE REMINDED THAT A GOVERNMENT EMPLOYEE AT THE TIME OF RETIREMENT CANNOT RECEIVE THAT RETIREMENT AND AT THE SAME TIME RECEIVE WORKMEN'S COMPENSATION FOR AN INJURY ON THE JOB.

AND SO, MR. CHAIRMAN, IT WILL BE POINT AND COUNTERPOINT, WE WILL BE BETTER ABLE TO MAKE A JUDGMENT WHEN WE HEAR FROM OUR WITNESSES. I AM ANXOUS TO HEAR THEIR TESTIMONY.

THANK YOU, MR. CHAIRMAN.

STATEMENT OF R.J. VOGEL
CHIEF BENEFITS DIRECTOR
VETERANS ADMINISTRATION
BEFORE THE
HOUSE VETERANS' AFFAIRS
SUBCOMMITTEE ON COMPENSATION,
PENSION, AND INSURANCE

APRIL 14, 1988

Mr. Chairman and Members of the Committee:

I am pleased to be here today to present the views of the Veterans Administration on H.R. 303, 100th Congress, a bill "To amend section 3104 of title 38, United States Code, to permit certain service-connected disabled veterans who are retired members of the Armed Forces to receive compensation concurrently with retired pay, without deduction from either."

For the reasons that follow, the VA opposes enactment of H.R. 303.

Section 3104(a)(1) of title 38 prohibits, among other things, the award of VA disability compensation concurrently with military retirement pay, except to the extent the latter is waived under other provisions of law. Waiver is authorized by 38 U.S.C. § 3105, and permits a retired servicemember to waive any or all retirement pay to receive instead an equal amount of VA benefits. Waiver is often advantageous to the veteran because VA benefits, unlike military retirement, are not subject to income taxes. H.R. 303 would, if enacted, remove the bar against concurrent payments, except to the extent that section 3104(a)(1) would, as amended, proscribe concurrent payment of these benefits based on the same disability.

A prohibition against dual awards has existed since 1891 when a statute prohibited payment of pensions to persons on the active or retired list of the Armed Forces. "Pensions" were that era's equivalent to modern disability compensation. The present proscription, contained in section 3104(a)(1), has, as it affects disability compensation, stood in the law relatively unchanged since its codification in 1958. Since then, Congress has considered numerous identical or similar-purpose bills that would overcome the current prohibition against payment of disability compensation concurrently with military retirement benefits. Thus far, Congress has declined to permit such pyramiding of benefits based upon the same period of service.

3.

Proponents of the legislation have made comparisons between military retirees entitled to veterans' compensation because of disabilities incurred during their military service and civil service retirees similarly entitled to veterans' compensation for service-connected disability. They point out that a civilian employee who has applied military service as a credit toward civil service retirement can draw longevity- and age-based civil service retirement and VA disability compensation at the same time, based on the same period of service. Thus, they conclude that a veteran entitled to longevity-based military retirement and VA compensation arising out of a period of service credited toward the military retirement should, as a matter of principle, be entitled to draw both benefits concurrently.

We believe such comparisons to be misleading. If a person is eligible for a civil service retirement annuity based on age and longevity, that person cannot concurrently with such payments receive a civil service retirement annuity based on disability. The same holds true for social security benefits. We doubt anyone would suggest payment of concurrent disability-based and longevity-based civil service retirement benefits or such combination of social security benefits. Neither would one argue that a person should be paid full longevity-based military retirement pay and disability-based military retirement concurrently.

Workers' compensation benefits which compensate United States civil servants for disability derived from employment are subject to the following analogous dual-benefits proscription: a person may not concurrently receive compensation pursuant to the workers' compensation law [Federal Employees Compensation Act] and a retirement or survivor annuity from the Office of Personnel Management. Such a beneficiary may elect to receive the more advantageous benefit but cannot receive both. While it is true that a Government employee may receive workers' compensation concurrently with military retirement pay, under the applicable law and implementing regulation, there is, in such cases, no connection between the military service for which military retirement is paid and the civilian service out of which the workers' compensation arose. The same may not be said, however, as to workers' compensation and civil service retirement; both benefits arise from the same service.

5.

VA compensation is a benefit based on the circumstances of a veteran's military service, just as is military retirement pay. To permit the adding of VA compensation payments to longevity-based military retirement payments for the same service would be equivalent to permitting dual payments of longevity-based and disability-based military retirement. Thus, the law appropriately requires waiver of one to receive the other.

This issue has been thoroughly addressed in the Federal courts, in Absher v. United States, 9 Cl. Ct. 223, aff'd 805 F.2d 1025 (Fed. Cir. 1986), cert. denied, 107 S. Ct. 1953 (1987). In that case the Claims Court held, in response to plaintiffs' assertion that section 3104 unconstitutionally denies them equal protection of the law, that the circumstances of military retirees and civilian retirees are very different. The court cited the special benefits accorded retirees (commissary, post exchange, recreational, travel, and health care privileges, plus eligibility to retire after only 20 years service, regardless of age, without making financial contributions to a retirement fund) which are not available to other Federal retirees. Because the groups are not similarly situated it is entirely reasonable for Congress to make different provisions for the two groups with respect to the need to waive retirement benefits in order to receive disability compensation. The Court of Appeals for the Federal Circuit agreed, summing up by declaring, "The balance [Congress] has struck is not only rational, it also bears a demonstrably fair and substantial relation to legitimate legislative objectives and does so without denying equal protection."

For nearly 100 years Congress has held that military retirement pay and compensation from the VA may not be paid concurrently. The provision for waiver of retirement pay in order to receive compensation allows a military retiree to choose whichever benefit is to his or her advantage. The enactment of this bill would reverse the longstanding and prudent principle that a person should not receive duplicate benefits based on the same circumstances of employment or military service. The provision of the bill which would prohibit concurrent disability retirement pay and compensation for the same disability would not serve to overcome the basic problem inherent in concurrent payments of military retirement and VA disability compensation.

We are unable to provide a cost estimate for H.R. 303 if enacted due to a lack of data on the number and the degree of disability of those retired military personnel who might be affected. Assuming most retirees with entitlement to VA disability compensation have already waived an equivalent amount of their retirement pay in favor of compensation, the bulk of future costs would fall upon the Department of Defense (DoD), since the bill would restore those payments currently being waived. Our records indicate that approximately one-third of the 1.6 million military retirees are receiving VA compensation or military disability pay. Some of the remaining two-thirds, of course, could potentially become entitled to disability compensation in the future. The Court of Claims noted in the Absher decision that DoD estimates of Government savings attributable to the duplicate-benefits bar could exceed $2 billion. Lacking adequate figures to develop a valid estimate, we defer to DoD on the question of cost.

In view of the foregoing, the VA opposes enactment of H.R. 303.

STATEMENT

OF

LIEUTENANT GENERAL ANTHONY LUKEMAN
US MARINE CORPS

DEPUTY ASSISTANT SECRETARY OF DEFENSE
(MILITARY MANPOWER & PERSONNEL POLICY)

BEFORE THE

SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
COMMITTEE ON VETERANS' AFFAIRS
HOUSE OF REPRESENTATIVES

12 APRIL 88

NOT FOR PUBLICATION
UNTIL RELEASED BY
THE SUBCOMMITTEE

Mr. Chairman and Members of the Committee

I am Lieutenant General Anthony Lukeman, the Deputy Assistant Secretary of Defense for Military Manpower and Personnel Policy in the Office of the Secretary of Defense. It is a pleasure to appear before the Committee and provide the views of the Department of Defense on H.R. 303, a bill "To amend section 3104 of title 38, United States Code, to permit certain service-connected disabled veterans who are retired members of the Armed Forces, to receive compensation concurrently with retired pay, without deduction from either."

As stated in the title, the bill would permit the payment of military retired pay plus disability compensation from the Veterans Administration without a dollar-for-dollar waiver of retired pay, as is now required under the provisions of section 3104 and 3105 of title 38, United States Code. However, the bill would continue to bar the dual payment of retired pay and VA disability compensation when these pays are based on the same disability. The provisions of the bill would be effective upon the date of enactment and would apply to already retired and future retired members.

The matter of receiving both retired pay and VA compensation has a long history of public policy. Since 1891, the dual receipt of both pay items has been prohibited, notwithstanding various bills that have proposed removing the bar. In each instance the policy that the dual award of retired pay and VA compensation cannot occur without an offsetting waiver was reconfirmed. Since the restriction was codified in 1958 at section 3104 of title 38, United States Code, it has remained basically unaltered.

The policy of not permitting duplicative benefits for the same period of service to the Government is not unique to receipt of military retired pay and VA compensation only. A similar offset feature is part of the Survivor Benefit Plan for members of the Uniformed Services. Similarly, in situations where a survivor of a military member is also entitled to Dependency and Indemnity Compensation from the VA, an offset is required, and a social security offset also applies that is equal to the widow or widower social security benefit attributable to military service. Both of these offset features reflect that the basis of the benefit award is on the same period or service of a member. A similar restriction also applies to civil service workers' disability compensation programs and civil service retirement or survivor payments, where both payments may not be awarded for the same period of employee service.

Recently, the restriction embodied in sections 3104 and 3105 of title 38, United States Code, was reviewed by the Federal Claims Court in the case of Absher v. United States (9 Cl. Ct. 223, aff'd 805 F. 2d 1025 (Fed. Cir. 1986), cert, denied, 55 U.S.L.W. 3730 (1987)). The Claims Court held, and the Court of Appeals for the Federal Circuit agreed, that the current law was reasonable with regard to the need of waiving military retired pay as a precondition for eligibility for VA disability compensation. This judicial scrutiny reaffirmed the soundness of present policy.

The Department of Defense supports the current prohibition. We believe that it would be inappropriate to pay two Federal benefits intended to compensate individuals for the same period or condition of service. We believe that it is reasonable to require a waiver of retired pay in an amount equal to the VA compensation as a pre-condition for award of VA compensation.

The current provisions of law do provide a degree of flexibility to the member. The member may choose whichever payment is the most advantageous, personally, and make a decision accordingly. As a pre-condition of VA payment, however, an amount equal to the VA compensation must be waived from military retired pay. If retired pay exceeds the VA payment amount, the member will still receive from the Service concerned the difference between the gross retired pay and the VA benefit amount. Conversely, if the VA payment exceeds the retired pay amount, the full VA payment is made after retired pay is waived.

Mr. Chairman, at this point I would like to address whether or not the Military Retirement Fund is experiencing a windfall as the result of the waiver requirement. The retired pay waived does not constitute a windfall to the Military Retirement Fund. Under the provisions of Chapter 74 of title 10, United States Code, the Fund receives assets from three sources: contributions from the Department of Defense, transfers by the Secretary of the Treasury from the General Fund of the Treasury, and interest paid on investments of the Fund. Each of these transactions is an intergovernmental fund transfer within the Unified Budget.

The contribution made by the Department is for the accrual retirement cost of the current force. It is the amount of money needed for investing today in order to pay for the future retirement costs of the current accruing service. This accrual cost is included in the DoD appropriations for direct payment into the Fund. By contrast, the transfer by the Department of Treasury from the General Fund is in the amount necessary to amortize past service unfunded liability. These transfers to the Fund are under continuing appropriation authority to the Treasury. The calculations of the accrual costs for present service and the amortization costs for past service are made by the DoD Office of the Actuary and approved by the DoD Retirement Board of Actuaries, an independent Board appointed by the President.

In making their determinations concerning accrual costs and unfunded liability transfers, the Actuaries include in the calculation that retired pay must be waived for VA compensation award. Absent the waiver requirement, the budget appropriation request and the outlay projections would have to be increased about

8.3 percent. Payments to the Fund do not include any excess appropriation attributable to the required waiver. Similarly, the determinations of the Board concerning the amortization of the unfunded liability for past service include the required waiver. Transfers by Treasury to amortize the unfunded liability do not include any excessive costs. Since both the accrual costs and the unfunded liability transfers include and account for the required waiver, there is no resulting windfall or surplus to the Fund.

Our most recent data indicate there are 1.5 million retired military members. Of that total, 426,614 are waiving part or all of their retired pay to receive VA compensation; 317,524 are partial waivers and 109,090 are full waivers. Of those members waiving retired pay, 137,018 were retired from the military with a disability, while 289,596 were retired for nondisability reasons. Officers waive retired pay in 89,729 instances, while 327,730 retired enlisted members have a waiver in effect, as do 9,127 retired reservists. Within the nondisabled retiree population waiving retired pay, 271,805 have a partial waiver and 17,791 have a full waiver. Among the disabled retirees, 45,719 are waiving part of their retired pay while 91,299 have a full waiver applying. The annual amount waived is about $1.47 billion as of September 30, 1987; $707 million is waived by disabled retirees and $762 million by nondisabled retirees. These data provide a summary background on the population that H.R. 303

would address, and indicate the magnitude of the administrative complexity involved.

Were H.R. 303 to be enacted, there would be immediate increases in DoD appropriations, in deficit outlays from the Military Retirement Fund, and in amortization payments of the unfunded liability from the General Fund. Because of the "same disability" clause in H.R. 303, precise cost estimates are difficult to determine. However, actuarial projections have provided the maximum and minimum increases that can be expected for the DoD resulting from this bill. Our projections estimate a maximum increase in the deficit outlays from the Fund to be $1.7 billion, growing to $2.1 billion from fiscal years 1989 through 1993. We also expect the DoD appropriations to increase by $1.6 billion to $1.8 billion over the same fiscal years. At a minimum, Fund deficit outlays would be increased from $1.1 billion to $1.3 billion for fiscal years 1989 through 1993. Projections indicate that the minimum increase in DoD appropriations would be by $1.0 billion rising to $1.1 billion for the same period.

($ billions)

	Fund Deficit Outlays		DoD Appropriations	
	Max	Min	Max	Min
FY89	$1.7	$1.1	$1.6	$1.0
90	1.8	1.1	1.7	1.1
91	1.9	1.2	1.7	1.1
92	2.0	1.2	1.8	1.1
93	2.1	1.3	1.8	1.1

Mr. Chairman, in view of the the long-standing precedent prohibiting the dual award of both retired pay and VA compensation and the projected increases that would occur in both the deficit and the DoD budget, the Department believes that the current policy set out at sections 3104 and 3105 of title 38, United States Code, is both reasonable and prudent and should not be amended as proposed.

Mr. Chairman, this concludes my prepared remarks. As always, we appreciate the opportunity to participate with the Committee on matters that concern members of the Armed Forces.

Statement of

The American Legion

1608 K STREET, N. W.
WASHINGTON, D. C. 20006

by

E. PHILIP RIGGIN, DIRECTOR
NATIONAL LEGISLATIVE COMMISSION
THE AMERICAN LEGION

and

PHILIP R. WILKERSON, ASSISTANT DIRECTOR
NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION
THE AMERICAN LEGION

before the

SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
COMMITTEE ON VETERANS AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

on

H.R. 303, TO PERMIT CONCURRENT RECEIPT OF MILITARY RETIREMENT AND DISABILITY COMPENSATION BENEFITS

April 12, 1988

STATEMENT OF PHILIP R. WILKERSON, ASSISTANT DIRECTOR
NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION
THE AMERICAN LEGION
BEFORE THE SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
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U.S. HOUSE OF REPRESENTATIVES
APRIL 12, 1988

Mr. Chairman and Members of the Committee:

The American Legion appreciates the opportunity to present its views on H.R. 303, a bill to amend title 38, United States Code, to remove the restriction against the receipt of Armed Forces nondisability retirement pay, based on length of service, concurrently with disability compensation provided under the laws of the Veterans Administration.

The provisions of sections 3104 and 3105 of title 38, United States Code, expressly prohibit the concurrent payment of emergency officers', regular, or reserve nondisability retirement pay, along with compensation or pension from the Veterans Administration, unless an amount equal to Veterans Administration compensation or pension is waived from the military retirement pay. This restriction applies to those officers and enlisted men who retired from active duty in the Armed Forces, or who retired as commissioned officers of the National Oceanic and Atmospheric Administration or the Public Health Service, and whose retirement is based on length of service.

H.R. 303 would amend section 3104 of the title, so as to permit the concurrent payment of the foregoing classifications of retirement pay, as well as compensation for any service-connected disability, without deduction from either the retirement pay or compensation.

Mr. Chairman, the delegates to the sixty-eighth National Convention of The American Legion adopted Resolution No. 485 in continuing support of legislative efforts to remove what this organization perceives to be a longstanding inequity in the law; section 3104 of title 38, as it applies to career military personnel.

H.R. 303 recognizes the fact that military retirees are the only Federal employees who are barred from receiving their full retirement together with compensation for a disability incurred as a result of military service. Other career Federal employees including members of Congress must make no such sacrifice. In point of fact, military retirees who were unfortunate enough to have incurred service-connected injuries or chronic diseases do not receive the full benefit intended by VA disability compensation. One purpose of this benefit is to provide some measure of economic assistance in recognition of a chronic disability and its potential impact on life-expectancy. Because of the legal prohibition against receipt of dual benefits, military retirees must, in fact, fund their own disability payments. The American Legion has for many years sought to remove this restriction as it is an unnecessary and unwarranted burden upon those men and women who have devoted their adult lives in careers of military service to this nation. We strongly believe they have "earned" the benefits provided under the Armed Forces nondisability retirement program and likewise feel they should be entitled to receive full compensation from the Veterans Administration for their service-connected disabilities.

In our view, there is a very clear-cut issue of equity involved. The two programs, military retirement and VA disability compensation, are based upon very different standards - twenty or more years of military service versus a percentage of disability determined by the VA - and the benefits provided under each program are for totally different purposes - recognition and reward for honest and faithful service in the Armed Forces versus compensation for impairment in average earning capacity in civilian life.

Several examples of the inequity created under the present law are worth considering. If an individual, during a minimum period of active duty, incurs a chronic disability, compensation benefits are payable. If that individual subsequently enters the Civil Service, their compensation will not be affected by such Federal employment. When eligible for retirement, under Civil Service, total years of government service including time spent on active duty will be credited in the computation of retirement pay. The VA compensation of such individuals will, likewise, not be affected by the receipt of Civil Service retirement pay. In this manner, the disabled nonmilitary, government career worker enjoys the full benefits stemming from Federal service. On the other hand, in the case of an individual who during the years of a career in the Armed Forces incurs a disability, his or her retirement pay will be based solely upon years of service and the pay grade attained. It will in no way reflect the presence of any degree of disability. If disability compensation is payable by the Veterans Administration for a service-connected disability, a portion of the retirement pay equal to the amount of VA compensation must now be waived. Section 3104 effectively caps the total amount of retirement benefits payable to a disabled military retiree. As previously stated, other Federal workers do not suffer under these same constraints.

Mr. Chairman, the disparity in disability benefits payable to retired military as compared to the nonmilitary Federal employee is substantial. The American Legion strongly believes this inequity should be eliminated so as to permit military retirees to receive the full amount of disability compensation for service-connected disabilities to which they may be entitled under 38 USC 3104 without suffering a diminution or reduction in their military retirement pay that is based on length of service.

This is not a new issue, nor is ours a hastily conceived position. The American Legion has for many years urged the passage of legislation, the intent of which has been identical to H.R. 303. Therefore, we certainly commend the author of this legislation for his persistence, and the Subcommittee for holding this hearing.

Mr. Chairman, that concludes our statement.

THE NON COMMISSIONED OFFICERS ASSOCIATION
OF THE UNITED STATES OF AMERICA

"STRENGTH IN UNITY"

NCOA

STATEMENT OF

Charles R. Jackson
Vice President for Government Affairs

before the

Subcommittee on Compensation,
Pension and Insurance
Committee on Veterans' Affairs

U.S. House of Representatives

on

H.R. 303

April 12, 1988

NATIONAL CAPITAL OFFICE
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NCOA

Mr. Chairman, the Non Commissioned Officers Association of the USA (NCOA) is sincerely grateful to the committee for scheduling this hearing to exclusively hear testimony on the issue of allowing the concurrent receipt of longevity military retired pay and veterans' disability compensation. This issue is a matter of equity for military retirees who face discrimination on veterans benefits only because they served their country for more than twenty years.

Less the Veteran

For some reason, public and congressional perception of the military retiree is such that they are somehow considered "less the veteran" than their counterpart with less than twenty years of military service. Current law is rife with examples. Military retirees are denied job preference available to other veterans and education benefit training periods for current military retirees have been curtailed to less than the 10 years available to other veterans. There are no special employment programs for military retirees, no special counselling, no medical care preference, in fact, often no medical care at all. Indeed, the law goes out of its way to exclude military retirees from many veterans programs. And, yet, their only crime is that they remained in the service too long.

Even the Supreme Court in their consideration of the concurrent receipt issue last year did not conclude the policy of denying benefits to military retirees was fair. It concluded only that it was Constitutional for Congress to invoke financial considerations over fairness within Constitutional parameters. As a result, military retirees remain "less the veteran".

The Retiree Myth

There is a common misconception that all military retirees are comfortable if not wealthy; receiving half to three quarters of their active duty pay after 20 to 30 years of service; and, with unlimited free medical care, commissary and exchange privileges. The Supreme Court even cited these benefits. The facts are quite different.

Military retirees receive half to three-quarters of their "basic pay" upon retirement. However, this amounts to only 28% to 38% of the pay they were receiving at retirement because housing allowances, sea pays, fight pays and other special pays are excluded. In fact, almost 700,000, about half of all military retirees, receive less than $10,000 annually. Today's typical retiree receives just over $1,000 per month before taxes and deductions are made for survivor benefits. Furthermore, changes in the system imposed by Congress in recent years have further devalued military retirement for both current and future retirees. The average lifetime annuity loss is almost $30,000.

Second careers don't make up for this loss. In fact, the average retiree enters the labor force at wages substantially behind his or her civilian counterpart. According to DoD reports on post-service employment published last June the average military retiree will have lifetime earnings of 20 to 27 percent less than his civilian counterpart. At the same time actuarial estimates indicate military retirees have a one to two year shorter life expectancy than civilians and disabled retirees have a ten year shorter life expectancy than their nondisabled military counterpart.

Medical care, commissary and exchange privileges hardly make-up for these facts. Access to these facilities is contingent on geographical location and service funding. Medical care availability is a serious problem for retirees. Because of medical personnel and funding shortages at DoD military retirees are being denied direct care at military hospitals and clinics. For themselves and their dependents they must seek civilian care through CHAMPUS and must pay 25 percent or more of their medical cost. At age 65 retirees are forced into Medicare and the costs associated with that program. These programs could hardly be called free.

Civil Service

Many believe the argument for equity in concurrent receipt has some basis in comparing the military and federal civilian employee retirement systems. It does not. The systems are as incompatible as the character of service. By far, the biggest differences rest in length of service requirements and circumstances of service. Few civil servants face the same hazzards, bear the same burdens, or must move as often as military personnel. These differences justify the disparities in the system. Although both systems compensate partial disabilities it is only "less the veteran", the military retiree who must choose between compensation for either his years of service or his partial disability.

Equity

A veteran can spend twenty years in any profession except military service and be compensated for both longevity and service connected disability. The retired teamster, mine worker, auto worker, lawyer, dentist, insurance salesman, President or legislator, all may earn a longevity retirement that does not interfere with their entitlement to service connected disability compensation from the Veterans Administration. Only the military retiree suffers the mutual exclusion of one over the other.

Exception

The only exception to this rule is created when a military retiree who subsequently retirees from federal civilian employment and combines years of military and civilian service to receive a single federal annuity. Since the military retiree forfeits entitlement to military retired pay, his income is no longer subject to offset even though his federal annuity is based on military service. Altogether, this unusual twist represents the greatest inequity of all in that only some retirees must contend with the offset.

Conclusion

Equity on this issue is available only by Congressional resolution. The issue is one of fairness. Congress can continue to hide behind the protective decision of the Supreme Court. It can continue the "less the veteran" perception of the military retiree. Or Congress can act boldly to repeal this long standing inequity in the law. NCOA strongly urges Congress to enact H.R. 303 at whatever cost, to provide fair and equitable treatment for military retirees.

Thank you.

-end-

THE
MILITARY ORDER OF THE PURPLE HEART
OF THE
U.S.A., INC.

1782 1932

**THE ONLY CONGRESSIONALLY CHARTERED
VETERANS ORGANIZATION EXCLUSIVELY
For COMBAT WOUNDED VETERANS**

Statement of

Robert L. Alvarez, National Service Director

Before The

House Committee on Veterans' Affairs

United States House of Representatives

April 12, 1988

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STATEMENT OF
ROBERT L. ALVAREZ, NATIONAL SERVICE DIRECTOR
MILITARY ORDER OF THE PURPLE HEART
ON H. R. 303
BEFORE THE
HOUSE COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
UNITED STATES HOUSE OF REPRESENTATIVES
APRIL 12, 1988

H. R. 303

The Military Order of the Purple Heart is honored to have the opportunity to submit our legislative views on H.R. 303, the elimination of the waiver of military retired pay for those longevity retirees in receipt of veterans compensation. It is our pleasure to bring before you the views of our organization, which were endorsed by our membership, by resolution, at our 1987 National Convention in Orlando, Florida.

Since July 13, 1943, the payment of military retired pay and veterans compensation concurrently is prohibited by 38 USC 3104 (a)(1) and 38 USC 3105. In contrast, those veterans in receipt of retired pay from the private sector and civil service are not required to take a dollar for dollar offset from their retired pay in order to receive VA compensation.

Further inequity exists in the fact that VA compensation includes special allowances for dependency and extra allowances for special monthly compensation, which are above and beyond the normal veterans compensation rates. Whereas, military retired pay does not include any of these items. Yet, the military retiree is unjustly penalized for receipt of these extra compensation items.

Additionally, the longevity military retiree has a vested interest in his retirement system to which monies have been paid into, based upon his length of service. A system which has no logical correlation to veterans compensation. Each system is a unique system with separate funding and requirements.

We would also like to respond to a letter sent to our organization which stated that we should be prepared to relinquish or trade a portion or portions of VA benefits to offset the cost of this implementation. The Military Order of the Purple Heart takes umbrage to this communication. We wish to state, unequivocally, that we will not support any trading of VA benefits for this program, as there is no relationship between the cost of this program and VA benefits. In fact, we submit to you that there is no cost related to this restoration of benefits already on deposit through the Department of Defense military retiree fund.

We thank you for this opportunity to present our views and hope that you will give favorable consideration to eliminating the unjust requirement for longevity military retirees to waive their military retired pay when in receipt of VA compensation.

TESTIMONY

COLONEL HERB ROSENBLEETH, U.S. ARMY (RET)
NATIONAL LEGISLATIVE DIRECTOR
JEWISH WAR VETERANS OF THE UNITED STATES OF AMERICA

BEFORE THE
HOUSE COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
April 12, 1988

Chairman Applegate and Members of the Subcommittee on Compensation, Pensions, and Insurance of the House Veterans Affairs Committee, I am Colonel Herb Rosenbleeth, US Army (Ret), the National Legislative Director of the Jewish War Veterans of the United States of America, a congressionally chartered veterans' service organization. On behalf of our membership, I thank you for the opportunity to appear today to testify before this distinguished committee.

Since it's founding in 1896, the Jewish War Veterans of the USA, the oldest active veterans organization in the United States, has stood for a strong national defense and for just recognition and compensation for veterans. JWV is a voice for America's security interests around the world and has always taken a strong interest in human rights.

The Jewish War Veterans of the USA favors passage of H.R. 303, which would eliminate the statutory offset that requires a disabled career military veteran to waive the amount of his retirement pay equal to the amount of his V.A. disability compensation. The JWV strongly supports legislation, such as H.R. 303, which would correct this fundamental inequity to certain disabled veterans. Military retirees are the only group of federal retirees who must waive retirement pay in order to receive disability form the Veterans Administration. Should a veteran not wish to forfeit military retirement pay, he/she loses disability benefits from the Veterans Administration.

JWV believes this is a great injustice to the 250,000 disabled career veterans who have sustained a service-connected disability during military service. These 250,000 veterans who have sacrificed so much, now sacrifice their military retirement pay each month.

VA disability compensation is not the same as military retirement pay in that VA compensation is intended for the pain, suffering, disfigurement and impaired earning ability caused by the service-connected disability. Military retirement pay is earned for completing twenty or more years of active duty. The two benefits should be independent of each other, not interdependent.

JWV also believes this issue belongs in the Armed Services Committee rather than with the Committee on Veterans Affairs. The Veterans Administration is paying disability benefits to those who are entitled to disability pay. They are doing their part. It is the Department of Defense who is not paying retired pay to those who have earned it.

In conclusion, JWV believes legislation should be enacted to permit concurrent receipt of military length-of-service retirement pay and VA disability compensation.

THE
RETIRED
OFFICERS
ASSOCIATION

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STATEMENT OF

THE RETIRED OFFICERS ASSOCIATION

before the

Subcommittee on Compensation, Pension and Employment

of the

HOUSE COMMITTEE ON VETERANS' AFFAIRS

Presented by

Commander John F. Wanamaker, USN, Retired
Deputy Director of Legislative Affairs
The Retired Officers Association (TROA)

April 12, 1988

A Tradition of Service . . . Since 1929

MR. CHAIRMAN AND THE MEMBERS OF THE COMMITTEE

I am Commander John Wanamaker, USN Retired, Deputy Director of Legislative Affairs for the Retired Officers Association (TROA) which has its national headquarters at 201 North Washington Street, Alexandria, Virginia. Our association has a membership of more than 354,000 active duty, retired and reserve officers of the seven uniformed services. Included in our membership are approximately 50,000 auxiliary members who are survivors of former members.

Our appearance before you today is in support of legislation (H.R. 303) which would provide appropriate compensation to certain retired military veterans for the loss of future earnings capability resulting from injuries or illnesses incurred in the line of duty. Under current law all disabled veterans, with one exception, are provided disability compensation from the Veterans Administration (VA), That one exception is military veterans who retire for longevity and must forfeit an equal amount of their retired pay in order to receive VA disability compensation. The tax exempt feature of VA compensation is, therefore, the only financial advantage a retired military veteran realizes as compensation for his loss in future earnings capability.

It is important for the committee to understand that in supporting H.R. 303, we are not seeking concurrent payment of benefits based on the same disability. Further, we nor H.R. 303 propose that concurrent payments be made for the same service. We are only asking that the government pay an individual the retired pay he has earned based on years of military service and, should that individual become injured or contract an illness in the line of duty that causes him to lose future earnings capacity, then the government should also compensate him for that loss like all other veterans.

It is often cited that the Act of March 3, 1891 is the basis for current law (38 USC 3104 (a)(1)) and has remained relatively unchanged since its codification in Title 38 by P.L. 85-857 (1958). It's important to underscore that when the 1891 statute was enacted, retired pay was based on age and years of service and fixed at 75 percent of active duty basic pay for all retirees. In contrast, of all military retirees today, only 21 percent retire with 30 years or more of service and have their retired pay computed at 75 percent of basic pay.

Congressional prerogative to limit the compensation of retired veterans is not the issue here. For example, in 1985, in the opinion of The United States Claims Court (Judge Margolis), the congressional intent in enacting the Act of March 3, 1891, was to limit the amount of compensation, certain classes of individuals could receive as a result of military service. Further, in another decision the U.S. Court of Claims noted, [placing] a ceiling on the amount of compensation certain classes of individuals can receive from the federal government.... is, of course, a proper object of congressional concern." Puglisi v. United States, 215 Ct. Cl. 86,95,564F.2d 403,409 (1977)

Mr. Chairman, what is at issue is equity and how to fairly compensate for lost earning power. We fully realize that comparing the military retirement system and the Civil Service retirement systems is inappropriate since each system is designed to accomplish different purposes. I would point out, however, that a Civil Service employee can receive VA disability compensation both while employed by the government and after receipt of his Civil Service retirement annuity. It is difficult for military retirees to understand why they are denied concurrent receipt of their retirement pay and VA disability compensation while a Civil Service employee can receive both Civil Service retirement and VA Compensation with no waiver being required.

What is particularly distressing is that, in addition, the Civil Service employee can credit his military years of service to increase the Civil Service retirement annuity. We're not contending that the Civil Service employee is not fully entitled to do this. In fact, we believe a disabled veteran should be fully compensated for his reduced earnings capability due to his injuries or illnesses whether he may be military, Civil Service, or a private sector employee or retiree.

Mr. Chairman, if the Committee were to favorably consider H.R. 303, it would be faced with the problem of funding the military retired pay that has been waived by retirees under current law. There have been various estimates of the costs of H.R. 303, and the final word on these costs should be available from the Defense Department witness. However, using a simplistic approach and the data contained in the FY 87 DoD Statistical Report on the Military Retirement System, we estimate that the FY 89 costs would be in the neighborhood of $1.1 B per year. Since the House of Representatives has already agreed to the Budget Resolution without considering action on H.R. 303, it will be necessary to seek alternate means to fit the measure into the acceptable framework of the budget resolution.

While expressing our strong support for H.R. 303 as it has been introduced, we also know that the Committee has under consideration various alternatives with the intention of reducing the associated costs. Recognizing that budgetary constraints present a significant obstacle to favorable consideration of H.R. 303, we submit before the committee for its' consideration a less costly alternative than the plan contemplated by H.R. 303. In this regard, we could support a committee initiative to limit the combined VA disability compensation and military retired pay to a maximum 75 percent of basic pay for the grade held at time of retirement, adjusted for subsequent cost-of-living increases. In establishing this limit, we would not change the VA Compensation portion of the combination, but would have military retired pay adjusted to reflect the limitation. Under this concept, the increased benefits would be realized more fully by most enlisted members who, because of high year of tenure, leave military service short of the 30 year mark. This would also accommodate those who are forced to retire early due to injuries or illnesses and would place them in a financial status similar to their peers who were able to remain in service for a full 30 year career.

It is recommended that the following actions be taken to facilitate successful passage of H.R. 303.

- Limit the combined VA disability compensation/military retired pay total to not more than 75 percent of basic pay of the grade at time of retirement with appropriate cost-of-living adjustments. This would correspond to the limitations imposed by the Act of March 3, 1891, the law from which the current statutes evolved. This would also reduce the number of those eligible for increased benefits by over 21 percent - those who have retired with 30 or more years of service and who are already receiving the maximum amount that would be authorized.

- Authorize the VA access to IRS records, as recommended by a recent GAO report, to eliminate fraud in VA pension programs and the resultant overpayments, estimated to amount to $182.5 million annually.

- Combine the savings from eliminating VA overpayments with a delayed effective date of 1 August 1989 for H.R. 303 to avoid a budgetary impact on the FY 1989 budget resolution. This delay would also enable the Department of Defense to make the necessary adjustments to the retired pay accounts.

- Attach the measure as an amendment to the VA Compensation authorization bill to enhance passage.

Mr. Chairman, if these recommendations are adopted, I believe it would be possible to have this measure passed in the remaining days of this session. We appreciate your holding the hearings and giving us an opportunity to present our views.

I will now attempt to answer any questions that you or the members may have. Thank you.

UNIFORMED SERVICES DISABLED RETIREES
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Stephen Wolonsky, President

STATEMENT OF STEPHEN WOLONSKY
ALBUQUERQUE, NEW MEXICO

PRESIDENT
UNIFORMED SERVICES DISABLED RETIREES

BEFORE THE VETERANS' AFFAIRS
SUBCOMMITTEE ON COMPENSATION, PENSION, AND INSURANCE

U.S. HOUSE OF REPRESENTATIVES

ON

H.R. 303

ELIMINATION OF OFFSET BETWEEN VETERANS' DISABILITY
COMPENSATION AND MILITARY RETIREMENT PAY

APRIL 12, 1988

Thank you Mr. Chairman and Members of the Subcommittee on Compensation, Pension, and Insurance:

I am Stephen Wolonsky, a career military retiree, from Albuquerque, New Mexico. I served over 20 years in the Army of the United States and was disabled by my service in three wars. I am the President of Uniformed Services Disabled Retirees (USDR), and I am accompanied by Ignatius DeCicco, USDR Secretary/Treasurer and military retiree and the Honorable Peter N. Kyros, a former Member of Congress from Maine, a Naval Academy graduate, and USDR's legislative representative.

On behalf of USDR's national members totaling several thousand, I thank you for the opportunity to present the views of our membership in support of H.R. 303, introduced by Representative Bilirakis, who has demonstrated great leadership, on the effort to eliminate the offset between veterans' disability compensation and military retirement.

Since 1981 USDR has worked vigorously to change the law which prohibits disabled career veterans from receiving both disability benefits and retirement pay. USDR members believe that the current law is basically unfair to disabled career military retirees who in their youth made many sacrifices for our great country. USDR first challenged the law, as plaintiffs in the federal courts in the Absher[1] case based upon denial of equal protection under the Due Process Clause of the Fifth Amendment. Consistent with a long line of court decisions, the U.S. Court of Appeals for the Federal Circuit rejected out attempt to use the Equal Protection Clause to obtain greater benefits than Congress has chosen to provide under a particular program. In April, 1987, the U.S. Supreme Court denied our Petition for Certiorari. Therefore, the courts have placed this problem firmly before the Congress, finding no improper discrimination but simply, that the congressional purpose in the prohibition against dual compensation was to save money. The Courts said there was a rational basis for treating us differently, but USDR members do not believe that it is fair policy worthy of our nation. Today we appeal to the Congress as our last and only remedy to change the law and correct this injustice to career military retirees who are injured in the service of their country.

Everyone agrees that the rationale for the policy of the current law's prohibition of the payment of both disability benefits and retirement pay is strictly fiscal restraint by the Congress. The Congress imposed the economy measure only on the career military and it alone has the authority to change it. USDR members are well aware of the budget crisis that the

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[1] Absher v. United States, 805 F.2d 1025 (Fed. Cir. 1986), cert. denied, 55 U.S.L.W. 3730 (1987).

Congress and ultimately the nation must resolve. We believe that our concerns for fair treatment by the Government we served so selflessly can be met without unduly adding to the budget deficit. So, we ask that you, the members of the Veterans' Affairs Committee, remain open to our pleas for consideration, listen to our experiences and attempt to work with us toward a solution we can all support in enacting H.R. 303 in some measure.

To illustrate the experiences of most USDR members with the current law, I will describe my own situation. As a member of the Army, I served in three wars and received injuries by the loss of vision in one eye and a crippling blow to my upper torso, leaving me with limited use of my arm and hand. Despite these injuries, I served more than 20 years in the military service. I currently receive no retirement pay from the Department of Defense because I am 100% disabled. Every month I receive a disability compensation check from the Veterans' Administration. Mr. DeCicco, after over 20 years of service, receives a small part of his retirement pay from the Department of Defense every month and the Veterans' Administration sends the remainder to him in a disability compensation check.[2] In fact, the more years of active duty served beyond 20 years of service, the more retired pay you will be required to forfeit. The more you sacrificed and the more productive you were during your military career; the more you will be required to sacrifice in forfeited pay because of service-connected disabilities.

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[2] See attached chart showing how much retirement pay is waived.

The members of USDR have serious questions about the Department of Defense's use of the Retirement Trust Fund. What happens to contributions to the trust fund made on our behalf? How much is the investment value of the trust fund based upon our contribution? As you will note from these examples, if the prohibition in current law is changed, the additional cost would fall upon the Department of Defense, not the Veterans' Administration. It was our understanding that to attract high quality personnel to career military service, the Department of Defense offered to invest on our behalf, funds in a retirement trust fund. We believe that we earned both retirement pay and the right to be compensated for our pain and suffering due to physical injury. There are two different purposes to these compensation programs: the purpose of the disability benefit compensation program is to replace the loss of future earnings caused by disability and the purpose of retirement pay is to induce quality personnel to serve in the military and is earned. Military retirees who are not disabled, after 20 years of service, often have second careers with additional earnings. We do not have this option available to us. USDR members believe that the government has failed to keep faith with its program of an earned retirement annuity. Military service is a hardship in many instances; for years pay rates fell far below equivalent civil service and private sector rates of pay, there is constant change of duty stations making home ownership and the resulting equity built by personnel in other sectors very difficult to achieve and of course, there is the often life-threatening situations around dangerous and heavy equipment. The benefit package of limited medical care and commissary privileges do not overcome the hardships of service. As an incident to employment, most employees are able to obtain medical care through an employee health plan.

Despite the hardships of military service, we considered career service to our country an honor that we were privileged to choose. It is therefore troubling to USDR members to discover that if we had served less than 20 years and were disabled but continued to work for a private company or the federal civil service, we could receive a disability benefit and federal retirement pay or a private pension. We find the difference in treatment between career military and non-career military hard to justify except upon, as the courts have pointed out, fiscal restraint. The federal retiree may even base their retirement period upon military service time, so that the same service period is used as the basis for two different payments. Although our disparate treatment from the non-career service veteran is hard to justify, the following example is more difficult to explain. A member of USDR is a World War II career military retiree who returned to active duty during the Korean conflict. He became disabled upon his return during his service in Korea. He is still subject to the offset provision. He was already receiving retirement pay before being recalled to active duty. He receives nothing additional for his injury and must fund his own disability compensation from his retirement pay.

We urge the Committee to focus upon the differences in treatment between career military and non-career military. However, comparisons have been made between career military service and civil service. Obviously, as we have pointed out, these are faulty comparisons given the dangers of military service. Statements have been made that civil service employees are also prohibited from receiving both disability benefits and retirement pay concurrently. This is in some measure a true statement, but it is not the entire story. Federal employees under the Federal Employees Compensation Act receive disability benefits for partial permanent and permanent disabilities. Mr. DeCicco and I would be eligible for such benefits under Title 5, U.S.C. Section 8107. Civil service employees may receive periodic payments for such disabilities under this section and also receive retirement pay or regular salary if they return to work. This payment is not wage replacement but represents payment for the injury. A review of the statute 38 U.S.C. 314 granting Veterans Administration disability benefits will indicate similar injuries to those described under F.E.C.A. USDR believes that the career military should receive compensation for their injuries.

Mr. Chairman, we have many additional examples of how the current law creates an injustice to our membership. With your permission, I will not read the additional cases, but respectfully request that they be included in the hearing record.

On behalf of the members of USDR, I urge the Committee to carefully study the implications of the current law and the enactment of H.R. 303. The bill would eliminate the prohibition against concurrent payment of both disability benefits and retirement pay. The bill states on line 6, retirement pay "may be paid to any veteran concurrently". Once the strict prohibition is removed from the current statutes, an advisory committee could assist the Department of Defense and the Veterans' Administration in studying the feasibility of paying the career military a benefit for their injuries. We believe there are many options for phasing in such a disability payment. There are revenue benefits to the Treasury from income tax paid on retirement pay which is currently waived.

Over the last ten years, bills similar to H.R. 303 have been before the Congress. USDR believes that this year H.R. 303 is in an unique position for congressional action with over a majority of members of Congress as co-sponsors and the endorsement of a coalition of seventeen national veterans organizations. The Courts have clearly left the policy decision to Congress to change benefits to career military retirees. We are hopeful that Congress upon consideration of the treatment of career military retirees will make that change.

V. A. Disability Compensation for 100% Disabled Enlisted Retirees W/2 Dependents

RANK	PAY GRADE	YEARS OF SERVICE	RETIRED PAY	RETIRED PAY FORFIETED	TOTAL OF RETIRED PAY AND DISABILITY COMPENSATION	SUBSIDY RATIO
Private First Class	E-3	20	412.35	-412.35	1391.00	30%
Specialist Four	E-4	20	480.45	-480.45	1391.00	35%
Sergeant	E-5	20	596.40	-596.40	1391.00	43%
Staff Sergeant	E-6	20	702.60	-702.60	1391.00	51%
Sergeant First Class	E-7	20	802.35	-802.35	1391.00	58%
Master Sergeant	E-8	20	909.15	-909.15	1391.00	65%
Sergeant Major	E-9	20	1037.25	-1037.25	1391.00	75%
Sergeant First Class	E-7	28	1347.57	-1347.57	1391.00	97%
Master Sergeant	E-8	26	1390.94	-1390.94	1391.00	100%
Sergeant Major	E-9	25	1364.81	-1364.81	1391.00	98%

The above chart proves that staying on active duty beyond 20 years of service can be hazardous to your retirement pay should you become disabled. It also shows that the more you sacrificed and the more productive you were during your military career, the more you will be required to sacrifice because of your service connected disabilities.

SECOND CAREER EARNINGS LOSS

BJECT: The Conference Board's Study of Military Retirees' Post-Service Earnings

A recent report by The Conference Board compares wages for military retirees and civilian veterans and shows that both officer and enlisted military retirees earn less in their post-service careers than comparably aged and educated non-retiree civilian counterparts

For example, at age 44, immediately upon entering the civilian labor market, officer retirees working full-time year-round (FTYR) have about 27% lower earnings (about $9000*) than the 50th percentile of similarly skilled non-retired FTYR veterans

-- although this gap narrows by age 60, it never closes completely

-- represents a lifetime loss of 13.7% or $59,100*

-- if all officers are considered (in addition to FTYR), this lifetime loss increases to 23.5% ($90,100)

- For FTYR enlisted retirees, the earnings gap exceeds 20% at age 41 (about $8100)

-- similar to officers, this gap narrows but never closes completely

-- represents a lifetime loss of 19.7% ($74,500)

-- if all enlisted retirees are considered, this lifetime loss increases to 24.3% ($80,100)

- Post-service earnings profile plots for FTYR officer and enlisted retirees are attached

- These estimates are based on comparisons with the "average" of the civilian sector counterparts (i.e., the 50th percentile)

-- we believe that, due to the quality of our people, the proper comparison group should be higher than the 50th percentile

-- for example, AF personnel score higher than average on nationally normed aptitude tests

--- 70% of the FY84 enlisted force had scored above the 50th percentile on the Armed Forces Qualification Test (AFQT)

-- adjusting for this quality difference would increase the above earnings gaps and pay losses

--- however, there is no way to estimate from the data what the correct comparison group should be since that is a quality issue

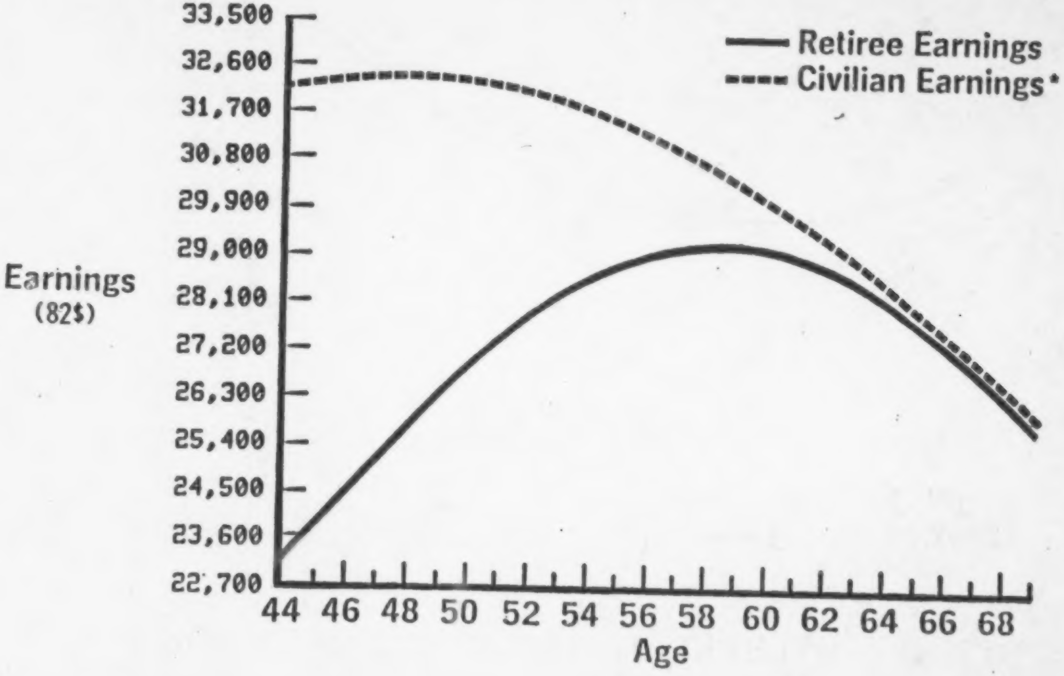
- Results of 1984 Conference Board survey of AF retirees' income due this summer

*All earnings gaps are in 82 $; lifetime losses are discounted at 5%; retiree earnings from 1977 DoD survey; civilian earnings from 1977 Current Population Survey

AF/MPACE/Major Norris
73208/25 Jan 85

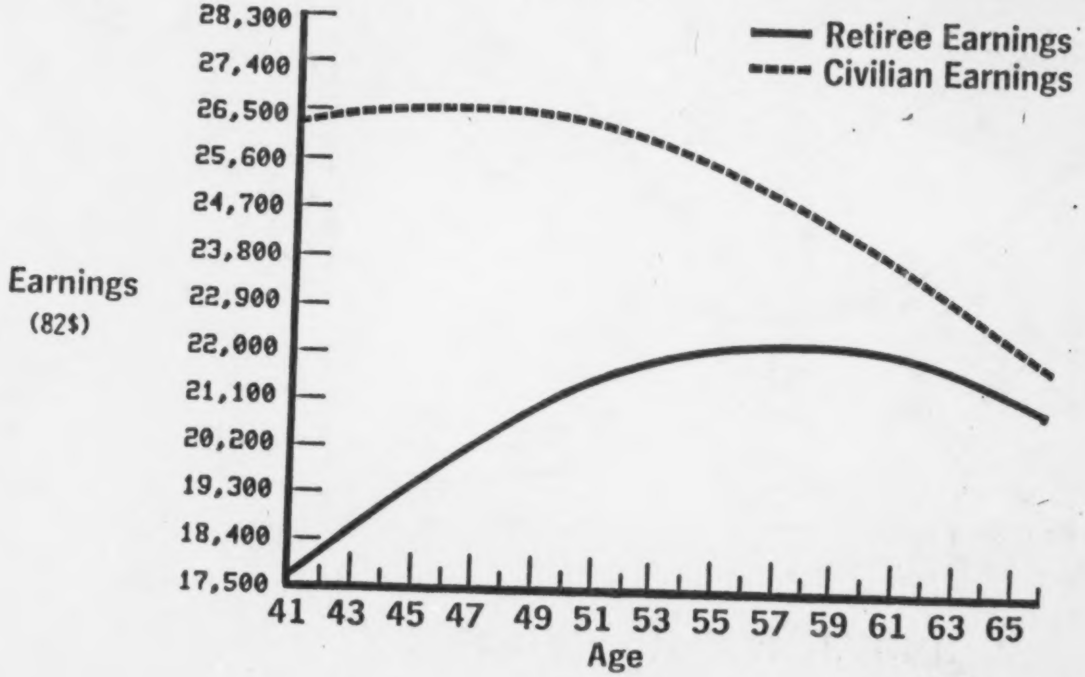
2 Atch
1. FTYR Officer Retiree Earnings
2. FTYR Enlisted Retiree Earnings

POSTRETIREMENT EARNINGS PROFILES OF FTYR OFFICERS AND MEDIAN CIVILIAN EARNINGS



*Source: 1977 Current Population Survey; adjusted for education, experience, race, and geographic location.

POSTRETIREMENT EARNINGS PROFILES OF FTYR ENLISTED PERSONNEL AND MEDIAN CIVILIAN EARNINGS



STATEMENT OF
JOHN C. BOLLINGER, ASSOCIATE LEGISLATIVE DIRECTOR
PARALYZED VETERANS OF AMERICA
BEFORE THE
SUBCOMMITTEE ON COMPENSATION, PENSION, AND INSURANCE
OF THE
HOUSE COMMITTEE ON VETERANS' AFFAIRS
REGARDING
H.R. 303, LEGISLATION TO ELIMINATE OFFSET BETWEEN MILITARY RETIRED PAY AND VA DISABILITY COMPENSATION
APRIL 14, 1988

Mr. Chairman and Members of the Subcommittee, I am John Bollinger, Associate Legislative Director of the Paralyzed Veterans of America. It is a pleasure to appear today to present the views and concerns of PVA regarding legislation that would permit certain service-connected disabled veterans who are retired members of the Armed Forces to receive VA compensation concurrently with retired pay, without deduction from either. Mr. Chairman, on behalf of our membership, I wish to express our appreciation for holding this important hearing. The eventual passage or defeat of this legislation is a matter of great concern to advocates on both sides of the issue. I, specifically, wish to thank Congressman Bilirakis for his effort to secure an equitable resolution to the problems surrounding the payment of these benefits.

At the outset, PVA can support the basic premise of H.R. 303 on philosophical grounds. Our arguments in behalf of this legislation are spelled out in the text of this testimony. We must emphasize, however, that we have grave concerns regarding the potential fiscal and programmatic consequences that would result if this legislation were enacted. At this time, we cannot lend our full support to this bill without knowing the precise impact it will have on cost and existing VA programs. I will discuss these concerns later on in my testimony.

Since Congress first enacted legislation in March 1891, dual receipt of military retired pay and disability compensation has been prohibited. Subsequent legislation affirmed the original intent of Congress and today Sections 3104 and 3105 of Title 38 contain specific language prohibiting what has been defined as "duplication of benefits." As you know, if VA disability compensation is awarded, military retired pay must be waived dollar for dollar as a precondition of entitlement to the disability compensation. This waiver requirement presently prohibits two features: 1) the dual award of payment based on the same disabling condition and 2) the dual award of payment based on the individual's military service. In regard to the first feature, PVA agrees that the dual receipt of military disability retirement and VA disability compensation represents duplication of federal benefits.

If enacted, H.R. 303 would not change this aspect of the law. Regarding the second feature, enactment would directly affect approximately 300,000 military retirees and re-define the objectives of several aspects of the programs involved.

As you may know, Paralyzed Veterans of America has not previously taken a formal position on the issue addressed by H.R. 303. On the surface, we have found a variety of conflicting arguments addressing the philosophical, legal and fiscal aspects of this provision. It is a complex issue which lends itself to an assortment of diverse interpretations. Comparisons between military and civilian retirement systems, military disability retired pay versus VA disability compensation, and the purposes and definitions of each sometimes vary even within the same group of advocates.

PVA supports the basic premise of H.R. 303, and I wish to emphasize that our support is the result of a careful analysis of the relationships between and objectives of the various components of VA compensation and military retirement. We believe that H.R. 303 is philosophically and legally sound for the following reasons.

It is our belief that military retired pay and VA disability compensation have two distinct and separate objectives. We fully understand the rationale in any retirement system which prohibits concurrent payment of both retirement based on longevity and retirement based on disability. In the case of the military, both DOD and the Supreme Court draw distinct similarities regarding the objectives of retirement based on disability and retirement based on longevity. Both are "personnel management tools" designed to ensure a "young and vigorous" military force. In other words, they are tools which are primarily in place to benefit the overall effectiveness of the military. Granted, early retirement provisions benefit the individual as well, but the principal purpose favors the military establishment.

VA disability compensation, whose sole objective is to compensate individual veterans who have suffered the loss or reduction of earning capacity resulting from a service-connected disability, therefore bears no relationship to the objective of retirement pay. Consequently, PVA does not feel concurrent payments represent duplication of benefits. A distinction must be made in order to properly define these programs. Simply put, it is wrong to say that retirement pay and VA compensation are awarded for the same service.

Opponents of H.R. 303 will argue the above conclusion by comparing the civilian and military retirement systems. They state that the benefits bestowed upon military personnel such as commissary and post exchange privileges, health care, and less stringent length of service requirements put them in a far more favorable position compared to their civilian counterparts. In addition, civil service employees must purchase their retirement benefits, whereas no such contribution is required of military personnel. We believe such comparisons are inappropriate and unfair. How can we compare the relationships of professions and derived benefits and then subjectively pronounce one group more deserving than another? If the groups are not similarly situated, one can as easily argue that a military life of long hours, frequent transfers, dangerous assignments and years of being separated from one's family over the course of a career, puts a professional soldier at a disadvantage when compared to his or her civilian counterparts.

It is also argued that the minor disabilities of a career military member, specifically those disabilities resulting in a VA rating of 10, 20, or 30%, would not significantly affect his or her earning capacity. Would anyone suggest that a civil service retiree rated 30% for a severe foot injury be at a greater disadvantage than a military retiree rated 30% for the same injury? We think not.

In summary, most all retirement systems prohibit concurrent receipt of retirement pay based on longevity and retirement pay based on disability. The military is no exception. Everyone except the military retiree, however, can receive VA disability compensation in addition to their retirement. For the reasons stated above, PVA feels this is inequitable and that legislation to remedy such discrimination is proper.

We must now convey our serious concerns regarding the potential financial and programmatic impact that H.R. 303 would have on existing VA programs and a limited federal budget.

The problem is, we are uncertain to what degree H.R. 303 will affect these areas. We have carefully reviewed the cost estimates provided by the Congressional Budget Office, including the "phase-in options" which would dramatically reduce the outlays required.

In order to entirely eliminate the offset, CBO estimates outlays ranging from $1 billion in Fiscal Year 1989 to $1.2 billion in Fiscal Year 1992. These figures are of great concern to us. Initially, we understand there is some discrepancy involving assumptions upon which these estimates were based. Several sets of figures provide different numbers of career disabled veterans who are affected by the waiver requirement. The amount of money actually being waived is also in question. We are hopeful that such discrepancies can be resolved in order that future deliberations on this matter will benefit from precise and meaningful statistics.

Further, it was our understanding that the amount of money waived annually represented a surplus in the Military Retirement Trust Fund and could therefore be a possible source of funding for this bill. According to the Office of the Assistant Secretary of Defense, however, the Fund does not include any excess appropriation or transfer of funds attributable to the required waiver. In short, the retired pay waived by disabled career retirees does not constitute a windfall to the military retirement fund and therefore is not an option.

Next, PVA is uncertain regarding the potential effect H.R. 303 will have on existing VA programs. Having submitted an Independent Budget which cries out for funds to maintain current services, we must outright reject any proposal which would result in the curtailment of any existing programs under the jurisdiction of the Veterans Administration.

In conclusion, although PVA agrees in principal with the intent of H.R. 303, we cannot, at this time, add our support to a bill that calls for over $1 billion in outlays. We do not feel the time is right for enactment. Our position on the "phase-in options" remains open. However, we emphasize that such options cannot come at the expense of existing VA programs.

We look forward to working closely with the Subcommittee to secure eventual passage of legislation that would bring equity to military retirees without having a prohibitive adverse effect on VA programs and overall budgetary restraints.

That concludes my testimony, Mr. Chairman, and I will attempt to answer any questions you might have.

STATEMENT OF
RICHARD F. SCHULTZ
ASSOCIATE NATIONAL LEGISLATIVE DIRECTOR
DISABLED AMERICAN VETERANS
BEFORE THE
SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
OF THE
HOUSE COMMITTEE ON VETERANS AFFAIRS
April 14, 1988

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the more than one million members of the Disabled American Veterans, I wish to express our appreciation for the opportunity to appear here today to present our views relative to H.R. 303, a bill designed to permit the concurrent receipt of military retirement pay and VA disability compensation payments.

At the outset, Mr. Chairman, the DAV wishes to commend you and the members of the Subcommittee for your continued support for the VA programs designed to assist our nation's service-connected disabled veterans and their families. Clearly, America's service-connected disabled veteran population owe a debt of gratitude for the dedicated hard work performed by this Subcommittee.

Mr. Chairman, current law (Sections 3104 and 3105, Title 38, U.S. Code) does not permit the concurrent, full receipt of VA disability compensation benefits and military retirement pay without a deduction from either. In cases where veterans have dual entitlement to both benefits, veterans must (1) receive one or the other, or (2) waive the amount of military retirement pay equal to the amount of VA compensation payments to which they are entitled.

To correct this inequity, Congressman Bilirakis introduced H.R. 303, which currently has more than 220 cosponsors. This measure, if enacted, would allow the concurrent receipt of military retirement pay and VA compensation payments, so long as the military retirement pay and VA compensation payments are not based on the same disability.

Mr. Chairman, DAV National Convention delegates, over the past several years, have approved a resolution calling for the concurrent receipt of military longevity retirement pay and VA disability compensation payments. Recognizing that the concurrent receipt of VA disability compensation and military disability retirement pay would be a duplication of federal benefits, our National Convention delegates have supported the concurrent receipt of VA compensation and military longevity retirement pay. We therefore, strongly support the enactment of H.R. 303.

In reaching the decision to support the concurrent receipt of VA disability and military longevity retirement payments our National Convention delegates recognized the inequity in current law which requires longevity retired military personnel to, in effect, pay for VA compensation benefits out of their military retirement pay. To our knowledge, no other category of federal retirees are required to waive their federal retirement pay to receive VA compensation payments.

Mr. Chairman, as an example of the inequity in current law, consider if you will two individuals who incur combat disabilities. One of these individuals is discharged after two years of service, while the other decides to make the military a career, retiring after 20 years. The combat disabled veteran who left service after two years receives VA compensation following separation from military service, and any other private or federal retirement benefits to which they may gain entitlement. However, the other individual who also sustained combat related disabilities, and remained in military service for 20 years, did not receive VA compensation payments during the 20 years spent in military service and, is also precluded from receiving full military longevity retirement pay and VA disability compensation payments. Rather, this individual must waive a portion of his military retirement pay to receive a like amount of VA disability compensation. As you can see, the longevity retired military careerist is truly treated unfairly as a result of their choice of career.

Mr. Chairman, in your letter of invitation to appear here today, you also requested our suggestions as to which VA program should be cut in order for the Subcommittee to achieve cost savings equal to the cost of H.R. 303.

In response, while the DAV recognize that H.R. 303 will require substantial additional federal expenditures, we do not, however, believe that the increased cost associated with this measure should be included in the VA budget. Rather, the Department of Defense (DOD) must assume responsibility for the payment of full retirement benefits to all individuals who retire from military service based on longevity.

Under no circumstances should justly deserved VA programs of benefits and services be curtailed or eliminated to achieve a cost savings for the Department of Defense.

The DAV believes that all service-connected disabled veterans should receive compensation for their service-connected disabilities and, likewise, all military longevity retirees should receive full military retirement pay. In short, let VA provide disability compensation payments and DOD military retirement benefits.

This concludes our statement, Mr. Chairman. Again, we wish to thank you and the members of this Subcommittee for allowing us this opportunity to present our views on this important measure.

STATEMENT OF

JAMES N. MAGILL, DIRECTOR
NATIONAL LEGISLATIVE SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES

BEFORE THE

SUBCOMMITTEE ON COMPENSATION, PENSION, AND INSURANCE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

WITH RESPECT TO

H.R. 303
A BILL TO ALLOW FOR CONCURRENT RECEIPT OF MILITARY RETIREMENT AND SERVICE-CONNECTED COMPENSATION

WASHINGTON, D. C. APRIL 14, 1988

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE;

Thank you for the opportunity to present the views of the Veterans of Foreign Wars of the United States with respect to H.R. 303, a bill which would permit certain service-connected disabled veterans who are retired members of the armed forces to receive compensation concurrently with retired pay. This bill, introduced by the Honorable Michael Bilirakis, a member of this distinguished Subcommittee, currently enjoys the cosponsorship of over 200 members of the House of Representatives.

Mr. Chairman, it is an unfortunate but generally known fact that a large number of this nation's retired military veterans are being deprived of a portion of their retirement pay. This is due to the existence of a 19th century law that still bars concurrent receipt of military retired pay based on length of service and veteran's disability compensation. A 1944 law does permit retirees to receive tax-free compensation if they forfeit the equal amount of taxable retired pay. Military retirees comprise the only group of retirees subject to such a forfeiture or offset of retired pay. The civil service retiree or private sector retiree can collect the full amount of retirement annuity and disability compensation without reduction in either.

Granted, this law came into existence in a period when retirement was an all-too-seldom realized privilege for those members of the armed forces who were both sufficiently hearty and fortunate to serve long enough to qualify for Old Age Retirement. When VA compensation was created, it was the basic means by which persons could receive disability benefits if they had served fewer than 20 years in the military service. It was also the only means by which enlisted men could receive disability benefits if they were discharged from military service prior to completing 20 years of service. In fact, it was not until well after World War II that legislation was approved to permit enlisted men to retire from military service because of disability.

So, even though we may not agree with the structure and intent of this law pertaining to military retired pay and disability compensation as it was originally formulated many years ago, we at least recognize that it was in accordance with the standards of those time. In this day and age, when retirement and early retirement systems have become commonplace, the prohibition against the concurrent receipt of military retirement and VA compensation is an outdated inequity.

Further, we must not forget that VA compensation is afforded to veterans for disabilities they ahve incurred in the service of their nation. In effect, imposing an offset on that portion of military retirement pay which is equal to a veteran's VA disability cmpensation is a blatant insult. These individuals are being told that the pain, suffering and loss of earning power they have suffered are neither recognized nor valued by society.

One additional thought. We wonder whether Congress has ever considered that the Department of Defense realizes a windfall profit each time a military retiree elects to receive VA compensation. According to one estimate, DOD currently benefits from the offset by approximately $2 billion a year. The elimination of this inequitable and insulting treatment of this nation's retired military veterans is a longstanding goal of the Veterans of Foreign Wars. The voting delegates to the 88th National Convention of the Veterans of Foreign Wars passed Resolution No. 644, entitled "Oppose Waiver of Military Retired Pay." This VFW resolution resolves that: "...veterans who receive military retirement pay be granted the full amount of disability compensation from the Veterans Administration to which they are entitled without waiving any portion of their retirement pay."

As has already been mentioned, H.R. 303 introduced by Representative Bilirakis, would eliminate the dollar-for-dollar offset of military retired pay when the retiree is in receipt of VA disability compensation. It is the VFW's contention that disabled military retirees should not be asked to pay for their disability compensation out of their hard-earned retirement money. Disabled military retirees, through long service and great sacrifice in the defense of the nation, are entitled to both. Therefore, the VFW strongly supports the enactment of H.R. 303.

Finally, Mr. Chairman, in your letter of invitation you specifically asked us to provide suggestions as to which VA programs should be cut in order for the Subcommittee to achieve cost savings equal to the cost of the bill. I cannot state strongly enough the VFW's conviction that the cost of this legislation firmly falls on the back of the Department of Defense. We believe there are only a very small number of cases where a veteran has opted to waive VA compensation and who would with the elimination of the offset be in receipt of it. This dollar amount involved would be so low as to not financially strain the Veterans Administration. In any event, the VFW would never suggest cutting on-going VA programs to finance a new legislative initiative.

This concludes my statement, Mr. Chairman, and I would be happy to respond to any questions you may have.

STATEMENT ON CONCURRENT RECEIPT OF MILITARY RETIRED PAY AND VETERANS DISABILITY COMPENSATION

H.R. 303

TO THE
SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
VETERANS AFFAIRS COMMITTEE
U.S. HOUSE OF REPRESENTATIVES
14 APRIL 1988

BY
ROBERT W. NOLAN
NATIONAL EXECUTIVE SECRETARY
FLEET RESERVE ASSOCIATION

Not to be released until made public by
the House Committee on Veterans Affairs

FLEET RESERVE ASSOCIATION
Serving Career Enlisted Personnel of the
U.S. NAVY • U.S. MARINE CORPS • U.S. COAST GUARD
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INTRODUCTION

Mr. Chairman and members of this distinguished Committee, it is my privilege to present the views of the Fleet Reserve Association on what we perceive to be the inequitable prohibition of the concurrent receipt of earned military retired pay and earned veterans disability compensation. The Fleet Reserve Association is composed of almost 150,000 career enlisted personnel, active duty and retired, of the U.S. Navy, Marine Corps and Coast Guard. It is important to note that the vast majority of FRA members are not only wartime veterans but most have qualified as a wartime veteran in two or more of our nation's last four wars.

As the National Executive Secretary of the Fleet Reserve Association for the past twenty-three years, I assure you I have looked forward to the day when the Fleet Reserve Association would have the opportunity to place its views on this matter in the official record. Among military retirees, the prohibition of concurrent receipt of military retired pay and veterans disability compensation is most vexing. For those who have the unique dual status as a retired military careerist and a disabled veteran, the prohibition is considered grossly inequitable.

PRESENTATION

HISTORICAL BACKGROUND

A review of the history of this matter reveals that the prohibition against dual benefits for military retirees dates back to 1891, Act of March 3, 1891, ch. 584, 26 Stat. 1082. It was not until the Act of May 27, 1944, ch. 209, 58 Stat. 231 that the optional waiver of military retired pay in lieu of tax-exempt veterans disability compensation of equal dollar value was enacted.

While the prohibition against dual benefits became law in 1891, enlisted Navy personnel did not have the entitlement of military retirement until eight years later in 1899. Army and Marine Corps enlisted personnel had gained their military retirement right in 1885. However, no enlisted personnel of the military were entitled to military disability retirement until the first enlisted disability retirement system was established by law in 1949.

PURPOSE OF DISABILITY LAWS

It would be wise to clarify the diverse purpose of the military disability retirement and veterans disability compensation laws. Because even though both laws grant compensation for disability, the compensation is granted under different circumstances and conditions for different reasons.

The laws governing military disability retirement define the individual's disability as it pertains to his capacity to perform full military duty. The percentage of disability is graded to measure the *incapacity to perform full duty.* Furthermore, the disability must be rated at 30 percent or more disabling and be permanent in nature to qualify for full military disability retirement. Hence the military disability retirement system has provisions for a temporary disability retirement status of a maximum five year duration in which the disability condition has time to stabilize. The military retirement disability law does not take into consideration the average impairment of earning capacity that may be anticipated through the individual's lifetime as a result of the disability incurred in military service.

However, the law governing service-connected disability compensation for veterans is quite different. In considering this issue we cannot ignore the purposes of disability compensation, and their marked difference from longevity retired pay. Such an analysis follows:

FIRST The paramount purpose of disability compensation, whether its source be the military service or the Veterans Administration, is to "compensate the veteran for the personal anguish caused by the permanent disability..." 1/

1/ by the permanent disability..." *In re Marriage of Jones*, 119 Cal. Rptr. 108, 531 P.2d 420, 421 (1975). Specifically, disability compensation is "for the pain, suffering, disfigurement and the misfortune caused by (the veteran's) disability." *Id*. at 424. "(D)isability pay serves primarily to compensate the disabled serviceman for current suffering..." *Id* at 23/425.

SECOND Accordingly, disability compensation is "predicated on the disability, without regard to whether the veterans remain in the service and without any relation to any such subsequent service." [1]

THIRD Veterans Administration compensation is "not an earned property right which accrues to the veteran by reason of his years of service in military service, but is for personal injury or disease to him for service-connected disability." [2]

FOURTH Disability compensation also serves "to compensate the disabled veteran for the loss of his active duty military pay caused by his early retirement..." [3]

FIFTH Finally, disability compensation serves "to compensate the disabled veteran...for his reduced ability to compete for civilian employment." [4]

Furthermore, in recognition of these purposes, the disability is graded by a percentage in multiples of ten ranging from 0 percent to 100 percent.

From the foregoing analysis, two conclusions seem clear. First. The purposes of disability compensation sharply differ from the purposes of longevity retirement pay. Disability compensation relates solely to the disability and the resulting impairment. Second. Disability compensation is not for the "same period of service" as longevity retired pay but, instead, is for the disability itself.

[1] 23 Comp. Gen 284, 286 (1943), cited with approval by 26 Comp. Gen. 711, 715 (1947).

[2] Ramsey v. Ramsey, 474 S.W.2d 939, 941 (Tex. Ct. App. 1971), cited with approval by Ex Parte Johnson, 583 S.W.2d 660, 662 (Tex. Ct. App. 1979). Specifically, disability compensation "does not serve as a form of deferred compensation for past services." Luna v. Luna, 125 Ariz. 120, 608 P.2d 57, 62 (Ct. App. 1979); In re Marriage of Jones, supra, at 421 ("disability pay is not a form of deferred compensation for past services").

[3] Luna v. Luna, supra, at 62; In re Marriage of Jones, supra, at 421 (disability compensation is "for the loss of earnings resulting from (the veteran's) compelled premature military retirement").

[4] Luna v. Luna, supra, at 62; In re Marriage of Jones, supra, at 421, 423, 425 (disability compensation is to compensate the disabled veteran for his "diminished ability to compete in the civilian job market")

The Fleet Reserve Association believes there is no rational basis for the discriminating forfeiture of military retired pay by a military retiree to receive veterans service-connected disability compensation.

Statistics from the Veterans Administration reveal that as of September 1987, there were 429,776 military retirees with service-connected disabilities. A chart giving the number of retirees and their percentage of disability follows.

DISABILITY COMPENSATION
SPECIAL LAWS BY COMBINED DEGREE OF IMPAIRMENT
GRAND TOTAL AS OF SEPTEMBER 1987

			COMBINED DEGREE								
0%	10%	20%	30%	40%	50%	60%	70%	80%	90%	100%	OTHER
1,555	111,945	68.825	61.925	48.343	25.005	31.641	20.850	13.549	8,478	38,059	1

Please note that of the 429,776 recipients, 182,325 military retirees, over 42 percent, have VA rated disabilities of 20 percent or less. For these military careerists, their service-connected disability could not even be qualified or compensated for under the provisions of the military disability retirement law. Is the impairment of earning capacity for a service-connected disabled veteran any the less severe because the veteran is also a military careerist? We think not. The Veterans Administration's statistics reveal that as of September 1987, the 429,776 military retirees collectively received a total of $195,884,603 a month in veterans disability compensation.

THE FEDERAL GOVERNMENT'S RATIONALE

The Federal government's rationale we are told is based on the argument that a person should not be compensated twice by the government for the same period of "service." The FRA contends that "service" is not the basic criterion in this issue, service-connected disability and the degree of compensation for the impairment of earning capacity are the criteria! A veteran does not receive VA disability compensation because he was in "service", but because he was injured in service and the injury has impaired his earning capacity to a certain degree!

Proof of this is demonstrated in the fact that a military retiree, retired for length of service and employed as a federal civil servant must waive an equal portion of his military retired pay to receive veterans disability compensation. However, if the military retiree subsequently retires from federal service, waives his military retired pay and combines his total federal service for the purpose of retiring under the provisions of 5 USC Sect. 8332 (C)(2)(1982), he may receive his veterans service-connected disability compensation without the forfeiture of a single dollar of his federal retirement!

Yesterday, as a military retiree he had to waive a portion of his federal retired pay, today, as a civilian federal retiree he does not. The decision in the federal court case of Absher v. United States not withstanding, we believe this condition smacks of discrimination!

The U.S. Court of Appeals for the Federal Circuit on its opinion in the appeal of the court suit Absher v. United States, Appeal No. 86-885 said, "The stated congressional purpose was to save money, now estimated by the government at more than two billion dollars a year...It is hard to imagine a more rational basis for congressional action than fiscal restraint."

We appreciate the cost H.R. 303's passage would entail. However, we do not believe the desire to save the government money is justifiable grounds for denying one group of citizens their rightfully earned entitlements when another group receives the same entitlement without penalty.

CONCLUSION

Mr. Chairman, if we are not going to compensate military retirees for their service-connected disabilities without penalty in the same manner that we compensate other veterans, then we should establish a new system that compensates both groups of veterans equitably. A system should be established which cannot be perceived as having military retirees in effect, fund their own veterans disability compensation.

The Fleet Reserve Association is puzzled as to why this matter was referred to the Committee on Veterans Affairs and not the Committee on Armed Services. As we understand the issue, the cost of permitting concurrent receipt of both entitlements would impact on the Department of Defense's military retirement accrual fund and not the Veterans Administration's budget.

But whether action to correct the inequity is initiated by the House Committee on Armed Services or the House Committee on Veterans Affairs, the Fleet Reserve Association recommends that military retirees be treated justly and receive their earned service-connected disability compensation without any offset in the same manner as all other U.S. veterans.

We are informed there are approximately 28 million veterans in the United States today. Each one has been exposed to the vicissitudes of military service. Each one had the opportunity to elect a military career. For various personal reasons the vast majority elected to return to civilian pursuits. In fact, only one enlisted person of every ten who serves in our armed forces continues military service past the initial obligation and chooses to pursue a military career. Only one in ten elect to endure the hardships and vicissitudes of a military career and yet, when the time comes for that person to reap the earned benefits of a military career many civilians speak and act as though the rightful receipt of the careerist's militarily earned retirement and entitlements are some form of government largess or social aid.

The Government is not a bit bashful assuring that a military careerist is on call 24 hours a day, 365 days every year of his military service! Therefore, the Government should not be hesitant to justly compensate the military careerist for his service and any service-connected disability he incurs while performing that service.

I know that all American veterans are justifiably proud of their service to this great nation. They rightfully display their veterans status as a badge of honor. Recognizing this, you can appreciate today's military careerist's pride in the fact that he has earned that badge of honor at least twice over by serving his nation for a major portion of his adult life.

We appreciate this opportunity to present our views in this democratic forum. It is the assurance that we can do so that motivates us to serve a career in our nation's armed forces defending our freedoms.

We thank this Committee for its constant vigilance in veterans affairs in today's era of demanding budgetary restraint. We recognize your endeavor in our behalf and applaud you.

This concludes our statement, Mr. Chairman, I stand ready to answer your questions to the best of my ability. I thank you.

American Ex-Prisoners of War

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STATEMENT OF

CHARLES M. WILLIAMS

EXECUTIVE DIRECTOR

AMERICAN EX-PRISONERS OF WAR

BEFORE THE

SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE

OF THE

COMMITTEE ON VETERANS AFFAIRS

OF THE

U. S. HOUSE OF REPRESENTATIVES

WITH RESPECT TO

H R 303

WASHINGTON, D.C. APRIL 14, 1988

WE EXIST TO HELP THOSE WHO CANNOT HELP THEMSELVES.

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Mr. Chairman and Members of the Subcommittee:

On behalf of the thirty thousand plus members of the American Ex-Prisoners of War, and the eighty thousandex-prisoners of war that we represent, I come before you to speak on a subject that is near and dear to my heart as a retired member of our armed forces.

I speak to you to-day on the merits of HR 303 and why now is the right time to do the right thing. Not since the days of the Patriots at Concord has the feelings of America been so strong to right the wrongs that have been done to the people of this great country, all in the name of progress.

No other group of Americans is denied the right to collect compensation for injuries or illnesses they received in military service. It is ironic to think that a bank president can receive compensation concurrently with his retirement when he retires, a street cleaner can receive compensation concurrently with his retirement when he retires, the civilian scientist who flies as an astronaut can receive compensation concurrently with his retirement when he retires too; but oddly enough, the military pilot who who flew the space craft that the civilian scientist flew in is deprived of what should be his inalienable right.

I could say, Mr. Chairman, that the situation I have described is not fair, I could say that it is not equitable; but then no one ever said that life was fair or equitable. What America did say was that if you were injured, or became disabled as a result of your service to your country, you would be taken care of, and nothing was said about not taking care of you if you dedicated your life to the defense of your country, and retired from one of the branches of the armed services. This is an injustice that has been imposed upon the military of our country, and needs to be corrected. You gentlemen are in a position to recognize that an inequity has been committed, and take positive action,

In salesmanship training, you are trained to play up the positive aspects of the product, and to minimize the negative aspects, and I certainly would be remiss if I failed to recognize that the projected annual cost of 2 billion dollars is a very negative aspect. What I do want to point out is something that my father taught me many years ago, and that is that there are no free lunches. If you want to dance, the fiddler has to be paid. I know that is something that you and the American public would rather not hear, but it is a fact, that we must face.

A review of those benefits that the military are told are part of the retirement package when they first enter the armed services, and at each of the steps on the road to retirement will show that our fighting men have been asked , for over thirty years, to bear a disproporionate share of the cuts our citizens have been asked to make.

We believe that the right thing to do is to end the inequity that has been imposed on the retired militay for so many years, and allow concurrent payment of compensation, without deduction from either. We believe that the time is now.

Thank you.

STATEMENT OF
RICHARD J. GALLANT, LTC. (RET.)
UNITED STATES ARMY
ON H. R. 303
BEFORE THE
HOUSE COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
UNITED STATES HOUSE OF REPRESENTATIVES
April 14, 1988

Mr. Chairman, I want to express my deep appreciation to you and the distinguished members of your Committee for affording me the privilege to appear here today.

I am a military retiree, with over 20 years of military service. I entered the United States Army as a recruit, served as an enlisted man, non-commissioned officer, and retired as a commissioned officer. During my years of service I saw comabt in Korea, 1952-1953, the most notable engagement being "Pork Chop Hill." I saw combat in Vietnam, 1966-1967, serving as an advisor in the Highlands area. The areas you may recognize are Pleiku, Kontum, Dakto, the tri-border area. I was recognized by our government for my military service receiving several awards.

In all my years of service I knew one basic principle -- Integrity--. The belief in my country, and the principles for which it stands made me proud and filled me with a sense of dedication and purpose. For here was I an ordinary citizen being given the privilege to wear the uniform of his country and to follow in the footsteps of our forefathers who recognized that our Freedom and Liberty would not be achieved or maintained easily. It requires sacrifice, acceptance of responsibility and the willingness of its citizens to fight if necessay to preserve our way of life. All of us do not have the opportunity to serve. This unfortunately deprives many of our citizens the opportunity to pay back to their country something for the privilege of living in a free and democratic republic.

Mr. Chairman, since 1975 I have been eligible to draw VA service-connected disability compensation. However, I have not drawn one cent because of what I believe is "Principle." I have always believed that my military retirement has been earned and should not be given away or traded for other entitlements or benefits. In my opinion there are many who believe as I do. Do not be mislead by the term non-disability retirement, the military services do not easily grant medical retirements and the Physical Evaluation Boards try to effect the lowest possible rating they can. Suffice to say the military careerist, eventually a retiree, must undergo some of the most trying of experiences in order to reach that retirement notch.

Mr. Chairman, the issue as outlined in H.R. 303 tells an often related story told by Rudyard Kipling in his ode to a soldier called "Tommy." In essence it tells the soldier that when he is needed nothing is too good for him, but when the battle is over those who sent him forget, throw him out and nothing is what he gets. The story is not altogether true in the case before us today -- our country does a great deal for its military retirees and its veterans. Remember, a military retiree is a veteran. Currently there has been a significant cut back in the medical care afforded the retiree, there is for all practical purposes no dental care, he is not provided nursing home care, he is not able to obtain an eye examination or eye glasses from certain military hospitals and the list continues to grow. I relate this to emphasize to each of you and to your colleagues in the U.S. Congress that the military retiree has for many years graciously accepted his or her lot as Congress has directed. Why? The military retirees who have honorably served our country for twenty or more years and have retired because of longevity, length of service, non-disability retirement, believe in our government, support our government, and fully recognize and respect the civilian authority -- the President and the United States Congress -- over the armed forces of the United States. Further, because of this belief and our training to accept the orders issued, to do our duty, the military retiree, thus becomes a little reluctant to pursue what in their hearts they believe they are entitled.

Your action to right a grievous wrong that was perpertrated against the military retiree back in the 1940's, causing the retiree to effect a dollar for dollar offset from their retired pay in order to receive VA disability compensation is commendable. You and your co-sponsors are gratefully recognized for your efforts to date to correct an injustice to the military retiree.

In summation Mr. Chairman, I urge you and your colleagues in the House of Representatives and the United States Senate to unanimously pass H.R. 303.

The background for this action is:

- Since July 1943, payment of military retired pay and veterans disability compensation has been prohibited by 38 USC 3104 (a)(1) and 38 USC 3105. These and any other similar statements must be removed.
- Veterans (military retirees are veterans) in receipt of retired pay from the private sector or civil service are not required to take a dollar for dollar offset from their retired pay in order to receive VA disability compensation. However, the military retiree must offset his retired pay dollar for dollar. Such a situation is discriminatory and a penalty for honorably serving one's country for twenty or more years. Passage of H.R. 303 will right this wrong.
- Inequity further exists in that when the veteran is entitled to special allowances for dependency, or extra allowances for special monthly compensation which are above and beyond the normal veterans compensation rates, no such provisions exist in the retired pay of the military retiree, thereby creating another penalty for honorable service. Again, the passage of H.R. 303 will eliminate this injustice towards the military retiree.
- The longevity military retiree has a vested interest in their retirement system to which monies have been paid into, based upon their length of service. A system that has no relationship whatsoever to veterans compensation therefore there should not be an offset. Each system -- military

retirement and VA disability compensation is unique unto itself with separate funding and requirements. Your passage of H.R. 303 will show the wisdom of acknowledging the separation of these systems which have been linked by some for the express purpose of denial of VA disability compensation to the military retiree who has served twenty or more years. Congress should stand tall and rectify this travesty.

- There is no increased cost to the United States government because the systems are budgeted for these items. The cost factor is being used as a scare tactic and pseudo justification in order to deny a just and right recognition of the services that the military retiree has given to his country.
- Also, note that to deny passage of H.R. 303 is to say to those who have retired or will retire, "Serve your country honorably for twenty or more years, give it your youth and most productive years, go into combat, once, twice, or more, place your life on the line, sacrifice your family, go into the civilian world after your service at an age that most businesses do not want, receive a retirement that will not allow you to raise a family with all of its economic requirements, you will not receive benefits that others receive because you voluntarily elected to give the best years of your life and those of your family to your country, also, if you elect to make the Armed Services your career, be prepared to be denied what you expect upon retirement."

Mr. Chairman, that completes my presentation. Please accept my appreciation to you and your Committee for undertaking this issue.

1. LAST NAME - FIRST NAME - MIDDLE NAME: GALLANT, RICHARD JOSEPH
2. SEX: M
3. SOCIAL SECURITY NUMBER: 033 | 20 | 3965
4. DATE OF BIRTH: YEAR 28 MONTH 03 DAY 30
5. DEPARTMENT, COMPONENT AND BRANCH OR CLASS: ARMY USAR-FA
6a. GRADE, RATE OR RANK: LTC
b. PAY GRADE: 0-5
7. DATE OF RANK: YEAR 69 MONTH 07 DAY 29
8a. SELECTIVE SERVICE NUMBER: DNA
b. SELECTIVE SERVICE LOCAL BOARD NUMBER, CITY, STATE AND ZIP CODE: LB #DNA
c. HOME OF RECORD AT TIME OF ENTRY INTO ACTIVE SERVICE (Street, RFD, City, County, State and ZIP Code): 1407-A Washington St.
West Newton, MA
9a. TYPE OF SEPARATION: Retirement
b. STATION OR INSTALLATION AT WHICH EFFECTED: Fort Belvoir, VA
c. AUTHORITY AND REASON: --
d. EFFECTIVE DATE: YEAR 74 MONTH 11 DAY 30
e. CHARACTER OF SERVICE: HONORABLE
f. TYPE OF CERTIFICATE ISSUED: DD Form 363A
10. REENLISTMENT CODE: ----------------
11. LAST DUTY ASSIGNMENT AND MAJOR COMMAND: Hq Co, Hq Comd
12. COMMAND TO WHICH TRANSFERRED: USAR Control Group (RETIRED) RCPAC St Louis, MO
13. TERMINAL DATE OF RESERVE/MSO OBLIGATION: YEAR NA MONTH DAY
14. PLACE OF ENTRY INTO CURRENT ACTIVE SERVICE (City, State and ZIP Code): West Newton, MA
15. DATE ENTERED ACTIVE DUTY THIS PERIOD: YEAR 57 MONTH 08 DAY 05
16a. PRIMARY SPECIALTY NUMBER AND TITLE: 71193 Parachutist
b. RELATED CIVILIAN OCCUPATION AND D.O.T. NUMBER: NONE
17a. SECONDARY SPECIALTY NUMBER AND TITLE: 9300 Military Intelligence Officer
b. RELATED CIVILIAN OCCUPATION AND D.O.T. NUMBER: 131.068 News Analyst Broadcast

18. RECORD OF SERVICE	YEARS	MONTHS	DAYS
(a) NET ACTIVE SERVICE THIS PERIOD	17	3	26
(b) PRIOR ACTIVE SERVICE	2	9	26
(c) TOTAL ACTIVE SERVICE (a+b)	20	1	22
(d) PRIOR INACTIVE SERVICE	3	11	12
(e) TOTAL SERVICE FOR PAY (c+d)	24	1	4
(f) FOREIGN AND/OR SEA SERVICE THIS PERIOD	4	4	14

19. INDOCHINA OR KOREA SERVICE SINCE AUGUST 5, 1964: ☒ YES ☐ NO 660211-670206
20. HIGHEST EDUCATION LEVEL SUCCESSFULLY COMPLETED (In Years): SECONDARY/HIGH SCHOOL 12 YRS (1-12 grades) COLLEGE 3 1/2 YRS
21. TIME LOST (Preceding Two Yrs): None
22. DAYS ACCRUED LEAVE PAID: 60
23. SERVICEMEN'S GROUP LIFE INSURANCE COVERAGE: ☒ 20,000 $5,000 ☐ $10,000 ☐ NONE
24. DISABILITY SEVERANCE PAY: ☒ NO ☐ YES AMOUNT ________
25. PERSONNEL SECURITY INVESTIGATION: a. TYPE: BI b. DATE COMPLETED: 680619
26. DECORATIONS, MEDALS, BADGES, COMMENDATIONS, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED:

Legion of Merit; Meritorious Service Medal w/1 Oak Leaf Cluster; Bronze Star Medal w/1 Oak Leaf Cluster; Army Commendation Medal w/1 Oak Leaf Cluster; Silver Star; Air Medal; Good Conduct Medal; Combat Infantryman Badge; Purple Heart (See Item 27)

27. REMARKS:

Item 26, continued: w/1 Oak Leaf Cluster; Presidential Unit Emblem; National Defense Service Medal w/1 Oak Leaf Cluster; Korean Service Medal; Armed Forces Reserve Medal; Vietnam Service Medal; Vietnam Campaign Medal w/device 60; Vietnam Cross of Gallantry w/Silver Star; United Nations Service Medal; Vietnam Cross of Gallantry w/Palm

28. MAILING ADDRESS AFTER SEPARATION (Street, RFD, City, County, State and ZIP Code):
6100 Virgo Court
Burke, Virginia 22015
29. SIGNATURE OF PERSON BEING SEPARATED: Richard J Gallant
30. TYPED NAME, GRADE AND TITLE OF AUTHORIZING OFFICER: SANFORD P. FERNANDEZ, CPT, AGC, ASST AG
31. SIGNATURE OF OFFICER AUTHORIZED TO SIGN: Sanford P Fernandez

DD FORM 1 NOV 72 214 PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE. S/N 0102-002-0202 THIS IS AN IMPORTANT RECORD. SAFEGUARD IT. REPORT OF SEPARATION FROM ACTIVE DUTY

Statement of

Sergeant Major Howard W. Frazier

Before the

Subcommittee on Compensation, Pension, and Insurance

Committee on Veterans' Affairs

U.S. House of Representatives

April 12, 1988

Mr. Chairman and members of this subcommittee of the Veterans' Affairs Committee. It is an honor for me to appear before this Committee and I appreciate the privilege as a Veteran and as an American citizen.

My name is Howard W. Frazier and I live at 4602 Deming Avenue, Alexandria, Virginia 22312. I am a retired U.S. Army Sergeant Major, E-9, with over 30 years active service. I retired on 30 November 1978, with 10% service connected disability which was recently upgraded to 20% and is currently being reviewed by the Veterans Administration for possible additional upgrading. My disabilities are spinal and hearing problems caused while serving on active duty. I am a veteran of World War II, Korea and Vietnam. In my opinion, HR 303 is and has been, long overdue for the Veterans who have sacrificed many things in order to serve 20 or more years in the military service of this great country. It has been said, the U.S. Government gives with one hand and takes it away with the other. I believe this is true in the cases of Veterans who have served over 20 years, receive retired pay from the military and also are awarded a service connected disability compensation which is subtracted from the Veteran's military retired pay and reissued by the Veterans Administration. This is like robbing Peter to pay Paul. I believe it is a sad commentary on the part of the U.S. Government for them to recruit young men and women to join the military service, encourage them to make a career of it, promise retired pay after 20 or more years of service - but wait a minute - if you are injured in line of duty during your military career and awarded service connected disability compensation, it will be subtracted from your retired pay and reissued to you by the Veterans Administration. This kind of information would never appear on any military recruiting poster.

This is not a matter of what you are told, but what you are NOT TOLD. On the other hand, if an individual is a Veteran who served one hitch in the service, had been injured during this service, received a discharge and service connected disability compensation, went on to make a career in civil service, retired from same, the disability compensation would not be reduced from the civil service pension. The Veteran would receive the full amount on both counts. I wish someone would explain the rationale of that one!

What is right, is right and what is fair, is fair. I believe HR 303 is both right and fair and will indeed right a wrong that has been unfair to the American veteran retiree for too long.

If HR 303 is not passed into law, I do not believe the wishes, desires and feelings that President Abraham Lincoln had for the veterans of this country would be fulfilled.

Thank you, Mr. Chairman.

STATEMENT IN SUPPORT OF H.R. 303
LEGISLATION TO ELIMINATE THE MILITARY RETIREMENT PAY VETERANS DISABILITY COMPENSATION OFFSET
BY SENATOR SPARK M. MATSUNAGA

Before the Subcommittee on Compensation, Pension, and
Insurance of the House Veterans Affairs Committee
Room 334 Cannon House Office Building
Washington, D. C.
Thursday, April 14, 1988

Mr. Chairman, members of the Committee, thank you for your invitation to appear before you this morning in support of H.R. 303, legislation introduced by Congressman Bilirakis early in the last session to eliminate the offset currently required by law between military retirement pay and veterans disability compensation. As you know, H.R. 303 is co-sponsored by a majority of the members of the House. Although I introduced S. 2120, the Senate companion bill, only a month ago, eight senators have already lent their names as co-sponsors of the measure.

Mr. Chairman, the time is long overdue to redress an injustice that is perpetrated on thousands of career soldiers who were disabled during or as a result of military service. I think you will agree that these men and women are among the most deserving of federal benefits. Yet, they are prevented from receiving that which is their full due by a peculiarity of a nineteenth century law, a law that is neither rational nor equitable. The 1890 law barring concurrent payment is irrational because the purposes of disability compensation and military retirement pay are entirely different. Whereas the former is awarded as compensation for the pain and suffering caused by disease or injury contracted or incurred during military service, the latter is paid in recognition of twenty years or more of honorable, often thankless, active duty service.

The present statute requiring an offset between military retirement pay and disability compensation is highly inequitable. No other government employee is required to forego any part of his retirement annuity in order to qualify for VA disability compensation.

Examine the different fates of two veterans of the Korean War wounded in an identical manner by the same grenade explosion: one quits the military after the war and enters federal civil service; the other makes the military a career. At retirement, unlike the military careerist, the federal retiree is eligible to receive both federal retirement and VA disability compensation -- despite the fact that both suffer from identical disabilities engendered by the same cause. What makes this doubly incomprehensible to the military careerist is that the federal retiree's annuity is computed in part on his military service. Why does government offset the retirement pay of the military retiree when it does not do the same for a federal retiree whose annuity is partly computed on military service?

The legislation offered by Congressman Bilirakis will eliminate this gross injustice. On a practical basis, it will permit many disabled retirees to receive the full income to which they are entitled. For those who live on the edge of poverty, inhabit substandard housing, are confined to bed or wheelchair, or are struggling to support dependents, the additional income, small though it may be in many cases, will help ease oftentimes heavy financial burdens. The bulk of those helped in this manner, of course, will be non-commissioned officers and enlisted personel, who as a general rule retire at relatively low pay levels and thus do not possess the total resources to absorb an offset of their retirement pay.

On an ethical level, H.R. 303 will confer proper recognition on disabled retirees for the honorable service they performed. These men and women did not ask to be disabled, but they were prepared to sacrifice body and spirit in defense of our country. Because they were disabled is no reason to disregard their twenty-plus years of career service. Do we consider the courage exhibited by firemen and policemen in the course of their work as less courageous or self-sacrificing because they happen to make a career of their work? Yet this is precisely the situation facing the disabled military careerist. In fact, one veteran has informed me that the "extraordinary heroism pay" awarded to him as a result of gallantry in combat as a marine in Vietnam is included in his retirement pay offset. This is outrageous -- it is as if his heroic acts had never taken place, that his country no longer recognizes his bravery, simply because he chose to make his career in the military service. This particular veteran -- this hero -- now must support himself and a large family on $10,000 a year.

I know that many members of this Committee are sympathetic toward the plight of disabled retirees. However, I know that this sympathy is tempered by a concern over the pricetag of this legislation. The Congressional Budget Office (CBO) estimates that, under the new accrual accounting rules in effect for the Military Retirement Trust Fund system, H.R. 303 will cost a billion dollars a year in outlays and twice that much in budget authority. Indeed, the invitation to appear before this panel cogently echoes this concern by soliciting my "views as to which VA programs could be cut in order for the Subcommittee to achieve cost-savings equal to the cost of the bill."

Mr. Chairman, with all due respect, I believe that the invitation's solicitation is somewhat misleading. It is my understanding that elimination of the offset will not result in significant increases to the cost of veterans programs. Almost all disabled retirees choose to take veterans disability compensation over an equal amount of retirement pay because of the superior tax benefits of the former. It is military retirement pay, not veterans disability compensation, that is presently being withheld; thus, elimination of the offset will affect primarily the Department of Defense budget, not the Veterans Administration budget.

Mr. Chairman, this is a technical point, albeit an important one. Nevertheless, I do understand the point behind the Committee's invitation: that the bill will have an adverse fiscal impact on the entire federal budget. I must admit that I too have been concerned about this. To this end, before I introduced the Senate companion bill to H.R. 303, I actively explored ways in which the elimination of the offset could be gradually phased-in. I asked for and received from CBO several alternative funding scenarios which included caps on total income, waivers based on levels of disability, and waivers based on percentages of retirement income. It is interesting to note that some of these alternatives run as low as $100 million annually. Because more information needs to be gathered, it would be premature to recommend a specific option; but I would be more than willing to work with Congressman Bilirakis and your Committee in formulating the details of any phase-in alternative.

However, before doing so, I would like to stress to the Committee that in working out any temporary accommodation, and I stress the word "temporary," we should not thereby set aside the underlying principle of equity on which H.R. 303 is based.

I believe that the total elimination of the offset should be our final goal, and that we should proceed with that goal in mind from the very beginning. Our starting point should be that veterans disability compensation and military retirement pay are benefits paid for entirely different reasons and should be paid in full to those who earned them. That is why I urge this Committee to recommend passage of H.R. 303, which embodies the principle of equity, before working on ways to cut down the initial costs of the legislation.

Thank you, Mr. Chairman, for this opportunity to present my views before the distinguished members of this Committee. I know that we can count on you to give this matter every due consideration. I ask only that you not forget that disabled military retirees are veterans too.

# # #

STATEMENT OF CONGRESSMAN KENNETH J. GRAY
REGARDING H.R. 303

MR. CHAIRMAN: I consider it a privilege to testify before your Subcommittee on the need to correct an injustice now found in the Veterans Administration laws. I support H.R. 303,and have introduced H.R. 1251, in that this legislation provides a fair and reasonable means of compensation to those individuals who have professionally served their country in a dedicated and competent manner, and while performing such duty, received a specific injury requiring government compensation.

It is only reasonable for the government to acknowledge the commitment these individuals have made in defense of our country's security and protection of our values by providing these retirees with their total earned retirement as well as full compensation for those disabilities incurred while performing service to their country.

It is important that we assure all those individuals who are presently serving, and who seek to serve, as professional members of our Armed Forces, that their commitment will neither be forgotten nor diluted by reducing in any fashion the benefits or compensation to which they are entitled and have earned.

In closing, Mr. Chairman, let me again reiterate that I think the American people frown upon the idea that a person who gives beyond measure for his country and is then penalized by taking away his compensation. I hope legislation can be reported out to correct this injustice. Thank you.

TESTIMONY SUBMITTED TO THE VETERANS' AFFAIRS SUBCOMMITTEE ON COMPENSATION, PENSION, AND INSURANCE
U.S. HOUSE OF REPRESENTATIVES
ON
H.R. 303

BY CONGRESSMAN WAYNE DOWDY - MISSISSIPPI

April 14, 1988

Mr. Chairman, I appreciate the opportunity to speak out today in support of H.R. 303.

As I travel around my home state of Mississippi talking with veterans, I frequently hear about the need for this important legislation to correct a serious inequity affecting military retirees.

Our present law is very unfair to those who have given military service to our nation. Military retirees are being singled out for a financial penalty which is not imposed on any other group of Americans. Those who pursued other professions - banking, law, medicine or any field of their choice - are entitled to receive benefits for disabilities suffered in military service along with their full retirement checks. Yet, those who chose to dedicate their careers to the service of our country are forced to give up their military retirement pay to receive VA disability compensation.

This situation is particularly disturbing because those who contributed to the defense of our nation through military service have made considerable personal and family sacrifices throughout the course of their careers. If we are going to continue to attract to attract top-quality young people into military service, we must offer a solid system of benefits.

Mr. Chairman, this is a matter of fairness. I believe Congress should act to eliminate the offset between military retired pay and VA disability compensation.

The legislation is supported by our friends in the American Legion, the Disabled American Veterans, Veterans of Foreign Wars, Non-Commissioned Officers Association, Reserve Officers Association, AMVETS, and many other fine veterans groups.

Mr. Chairman, I urge the Subcommittee to act favorably on H.R. 303 so that those who gave military service to our country will receive their full benefits. I pledge my full assistance in this effort.

Statement of Major General Evan L. Hultman, AUS (Ret.), Executive Director of the Reserve Officers Association of the United States, to the House Veterans Affairs Subcommittee on Compensation, Pension and Insurance concerning H.R. 303, a bill to provide for concurrent payment of military retirement and service-connected disability compensation -- 12 April 1988.

Mr. Chairman and Members of the Committee:

On behalf of the many men and women from all of the uniformed services who are members of the Reserve Officers Association I appreciate having this opportunity to testify in support of H.R. 303, a bill which would provide for concurrent payment of military retirement and service connected V.A. disability compensation.

Military retirees are the only group of retired federal employees who must waive part of their retirement pay in order to receive V.A. disability compensation. If a veteran refuses to give up his earned military retirement pay on a dollar for dollar basis equivalent to his V.A. award, he loses his V.A. disability compensation. The same penalty does not apply if the veteran is a federal civil service retiree and uses his military service in the computation of his civil service retired pay.

The Reserve Officers Association believes that this 100% statutory offset, which is applied solely to military retirees, is an injustice to those veterans who have sustained a service connected disability during their military career. Because of this injustice, the Reserve Officers Association has adopted a resolution, 86-33, to correct this inequity. A copy of our mandate is enclosed.

Since V.A. disability compensation is not subject to taxation, military retirees elect to have their military retired pay reduced by the amount of their V.A. disability compensation. Thus, if H.R. 303 is enacted, it would have no budgetary impact upon the Veterans Administration; the V.A.'s budget already includes funds for the payment of disability compensation to military retirees. There is no reason for this Committee to consider V.A. programs for cutting to achieve dollar savings in the V.A. budget equal to the cost of the bill. There is no added cost to the Veterans Administration.

Thank you for the opportunity given to ROA to testify in support of H.R. 303. We appreciate the support that this Committee gives to the veterans of our country and we strongly encourage you to take favorable action on this legislation which will treat the military retiree veteran more equitably.

STATEMENT OF

NOEL C. WOOSLEY
AMVETS NATIONAL SERVICE DIRECTOR

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS

SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE

U. S. HOUSE OF REPRESENTATIVES

ON

H.R. 303 Concurrent Payment of Military
Retirement and Service-Connected Compensation

APRIL 12, 1988

9:00 a.m., Room 334
Cannon House Office Building

Mr. Chairman and members of the Subcommittee on Compensation, Pension and Insurance. AMVETS is grateful for this opportunity to present our views on H.R. 303.

First we should like to commend Messrs. Bilirakis, Bennett and Lowry for introducing this long overdue legislation which will correct a long standing inequity with respect to career military retired veterans.

Second we would like to thank Chairman Applegate and the members of the committee for conducting this hearing which serves as the public forum where the issues and concerns of all the interested parties may be expressed. We shall endeavor to address the particular concerns, which you outlined in your letter of invitation dated March 10, 1988. However, we are somewhat at a loss as to why any VA programs would be cut in order to achieve cost savings equal to the cost of this bill.

At the outset let me state that AMVETS enthusiastically supports H.R. 303. We have a mandate, via the resolution process from our 43rd National Convention convened in St. Louis, Missouri, to seek and support legislation which would repeal the requirement of waiving an equal amount of longevity retired pay in order to receive compensation for service-connected disability.

H.R. 303 has little or nothing to do with the budgetary process of the Veterans Administration. The basic issue involved deals directly within the Department of Defense (DOD) and it's budget. The fact that the DOD has for years reaped billions of added dollars, which were plucked from the pockets of our career military retirees, to its coffers without some type of mandatory pass-back to the VA is a crime. AMVETS has been led to believe for years that the DOD's budget authority included funding of the retired pay system it is required to administer. After a brief and somewhat cursory review of DOD's retired pay program, we wonder if there is now or ever will be actual adequate funding set aside to insure the integrity of this ever increasing expenditure which is directly related to national defense.

We are aware that the DOD has been invited to provide testimony here today and we hope that many unanswered questions will at last be part of the public record.

In closing, we would point out that the current provisions which requires a disabled military retiree to waive his retired pay

dollar for dollar in order to receive disability compensation is both inequitable and unjust. We have heard all the ludicrous and far too often absurd reasons as to why this group of federal retirees continues to be the only ones subjected to this inequity and we cannot in good conscience accept these reasons any longer. The fact that H.R. 303 currently has well over 200 cosponsors would indicate that the Congress too is no longer willing to blindly accept this flawed reasoning.

This concludes our statement and we feel sure that we will be better able to address this issue after the Department of Defense answers many of the questions we are sure this committee will be asking.

The Retired Enlisted Association
GOVERNMENT AFFAIRS OFFICE
225 N. Washington St., Alexandria, VA 22314
Telephone 703-684-1981

FOUNDED 1963

STATEMENT

OF

THE RETIRED ENLISTED ASSOCIATION

prepared for the

Subcommittee on Compensation, Pension and Insurance
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
Honorable Douglas Applegate
Chairman

on

H. R. 303

William E. Hazelton
Deputy Executive Director
for
Government Affairs

April 14, 1988

* * * UNITED WE STAND * * *

STATEMENT
OF
THE RETIRED ENLISTED ASSOCIATION
ON
H. R. 303

Mr. Chairman and the Members of the Committee:

Unique in its position of drawing its membership exclusively from the population of more than 800,000 career-retired enlisted military personnel, The Retired Enlisted Association urges passage of H. R. 303, a bill to remove the grossly inequitable offset of earned military retirement compensation by compensation paid for disability incurred while in military service.

TREA feels that comparisons of the military retirement system with either civil service or private sector programs is frivolous. As stated in public records referenced in the attachments, there is no comparison.* Is the civil servant required to "stand by" for a period of up to 15 years after separation to serve the Nation? Is Congress aware that if the military member is separated at any time prior to the 20th year of service, all retirement benefits are forfeited, and that in the case of enlisted personnel, no severance compensation whatsoever is provided? Why is it that on one hand, the career military person is not vested in a retirement program, but on the other hand he is excluded from the tax-deduction benefits of contributing to an Individual Retirement Account, on the premise that the military retirement program is deferred compensation? Members of the military contribute to the Social Security system. They pay taxes while in the service and continue to do so when receiving retirement compensation.

*Military Compensation Background Papers, 3rd Ed., Department of Defense, SECTION III, Subsection A, Ch. III.A.1, pages 367-368 attached.

These points have been made a matter of public record time and time again. In fact, the military retirement compensation program cannot be compared with any other, including the inclusion of several blatent inequities which remain a part of it. It is simply a promise for a promise.

Some members of Congress try to place the responsibility of determining how H. R. 303, if passed, would be funded in the hands of member organizations representing retired and active military. "..., witnesses are specifically requested to provide the Subcommittee with suggestions as to which VA programs should be cut in order for the Subcomittee to achieve cost-savings equal to the cost of the bill." **TREA's reply is simple. No current VA programs should be cut**. **TREA** anticipates funding will come from the Department of Defense, the agency already withholding the earned retirement benefits. VA disability compensation is not increased under the proposed legislation. Additional taxable income will return to the government in the form of federal and where applicable, state income taxes, a point that seems to elude opponents of the bill. Neither universe of career retired or disabled personnel should increase since each group is already on the rolls of the Department of Defense and the Veterans' Administration. Mr. Chairman, **TREA** respectfully asks how, if the professional expertise and vast accounting systems of the Veterans' Administration and the Department of Defense cannot identify and substantiate the expense of this legislation, how does Congress expect volunteer organizations to answer the question? Hearsay is not permissable in a court of law. Why is it submissable in Congress?

THE RETIRED ENLISTED ASSOCIATION
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TREA concludes, Mr. Chairman, that it is the responsibility of Congress and agencies of the federal government to determine the facts and substantiate them. Members of the military community, both retired and active, are taxpayers and registered voters. They have the privilege of requesting that the government substantiate its facts, but further, they should not be penalized by the inability of the government to keep its own records and answer questions.

TREA has stated that the military retirement system is a promise for a promise. With passage of H. R. 303, the Department of Defense will be required to deliver on its promise made at the time of enlistment or commission to members of the military who served 20 or more years: The promise to deliver an equitable retirement annuity in trade for the defense and honor of the United States. It will trade a promise for the promise made to those personnel who did not by their own choice or actions, become injured or disabled during their military career, sometimes to the extent of limiting their ability to hold or even be considered for full time gainful employment in a job market that often discounts those of us over 40 years old and who have loyally served one employer for a substantial length of time in a specialized capacity.

The promise was made. The promise has been broken. The career military person deserves more than this from the people of the United States.

The Retired Enlisted Association urges passage of H. R. 303 and thanks those 221 members of Congress who agree that this inequity must be corrected.

ATTACHMENT TO STATEMENT OF
THE RETIRED ENLISTED ASSOCIATION
H. R. 303

MILITARY COMPENSATION BACKGROUND PAPERS

Compensation Elements
and
Related Manpower Cost Items

Their Purposes and Legislative Backgrounds

THIRD EDITION
JUNE 1987

DEPARTMENT OF DEFENSE
OFFICE OF THE SECRETARY OF DEFENSE

ATTACHMENT TO STATEMENT OF

THE RETIRED ENLISTED ASSOCIATION

H. R. 303

Chapter III.A.1.

Overview of Retired and Retainer Pay, Separation Payments, and Post-Service Benefits

Broadly speaking, the individual chapters that comprise this Section III of *Military Compensation Background Papers: Compensation Elements and Related Manpower Cost Items—Their Purposes and Legislative Backgrounds* deal with the various items of pay and benefits that accrue to members of the armed forces when they retire or are otherwise separated from their respective Services. There are a number of pays and benefits that apply specifically to persons who are separated from their Services before they become eligible for retirement benefits, and these pays and benefits are set out under Subsection C of this Section III, "Separation Pays and Post-Service Benefits," below. A broader and more comprehensive set of pays and benefits accrue to members who retire from Service, whether because of disability or otherwise. Retired and retainer pays are covered in Subsection B of this Section III, "Retirement and Retainer Pays," and benefits available to retired members and their dependents are set out in Subsection D, "Benefits Specially Applicable to Retired Personnel and Their Dependents."

The purposes that underlie and inform the various pays and benefits covered in this Section III include:

- The provision of a socially acceptable level of payments to former members of the armed forces during their old age.
- The provision of a retirement system that will enable the armed forces to remain generally competitive with private-sector employers and the Federal Civil Service.
- The provision of a pool of experienced military manpower that can be called upon in time of war or national emergency to augment the active-duty forces of the United States, and to establish a mechanism whereby persons in this pool can move into and out of the active-duty force smoothly.
- The provision of a socially acceptable means of keeping the military forces of the United States young and vigorous, thereby insuring promotion opportunities for younger members.

As such, the principles and concepts of military compensation that are exemplified by the system of retired and retainer pays, separation pays, and post-Service benefits covered in this Section III are focused on the overall effectiveness of the compensation system in both peace and war, on the achievement of substantial equity for members of the armed forces, especially in the sense of establishing a compensation system that is generally competitive with compensation in the private sector, on the interrelationship between the military manpower requirements of the United States and the compensation system considered as a whole, and on motivation of members and potential members of the armed forces.

It should be noted that, while there may be a superficial resemblance between the military retirement system and retirement systems that exist in the private sector, there are in fact substantial differences between the military retirement system and all other retirement systems —including that of Federal civil servants. First, retired members of the armed forces are subject to recall to active duty; private sector employees and civil servants suffer under no such liabilities. Second, and in that same connection, regular retired members of

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the armed forces are fully subject to the Uniform Code of Military Justice,[1] thus providing sanctions for the enforcement of the recall authority. Third, entitlement to military retirement benefits is an all-or-nothing proposition, turning on the completion of a minimum of twenty years of satisfactory Federal service; the military retirement system, in marked contrast to private-sector and Civil Service retirement systems, does not provide for the gradual vesting of retirement benefits.

---

[1] The Uniform Code of Military Justice is codified as Chapter 47 of Title 10, United States Code, 10 U.S.C. §§801-940.

NATIONAL ASSOCIATION FOR UNIFORMED SERVICES
SOCIETY OF MILITARY WIDOWS
5535 HEMPSTEAD WAY
SPRINGFIELD, VIRGINIA 22151-4094

"The Servicemember's Voice in Government"
Established 1968

Statement of

Charles C. Partridge

Legislative Counsel

The National Association for Uniformed Services

Before the

Subcommittee on Compensation, Pension and Insurance

Committee on Veterans' Affairs

U.S. House of Representatives

April 14, 1988

Statement of
Charles C. Partridge
Legislative Counsel
The National Association for Uniformed Services
Before the

Subcommittee on Compensation, Pension and Insurance
Committee on Veterans' Affairs
U.S. House of Representatives
April 14, 1988

Mr. Chairman and members of the Subcommittee, I welcome the opportunity to present the views of the National Association for Uniformed Services to this distinguished panel.

The National Association for Uniformed Services (NAUS) is unique in that we represent all grades and ranks of uniformed services personnel and their spouses and widow(er)s. Our membership includes active, retired, and reserve personnel of all seven uniformed services: Army, Navy, Air Force, Marines, Coast Guard, Public Health Service, and the National Oceanic and Atmospheric Administration. With such a membership, we are able to draw information from a broad base for our legislative activities.

HR303, a bill to permit certain service connected disabled veterans who are retired to receive compensation concurrently with retired pay, without reduction from either, would correct a longstanding inequity.

The military professional is the only category of government servant or public or private employee who is required to forfeit dollar for dollar his earned retired pay for each dollar the Veterans' Administration pays to compensate him for a service connected disability.

I would like to address only two points today since you will hear from others concerning a variety of issues related to HR303. The two points are the argument that both military retired pay and veterans disability compensation are based on the same period of service and therefore as a matter of principle one or the other should not be paid. The second point involves current cost estimates to implement HR303.

In the view of our members, the "same period of service" principle is not only invalid but has long been breached. Here is how it is breached. Any civil servant who received VA disability compensation as a result of injuries or disease incurred during military service may also count that military service toward civil service longevity and retirement while concurrently receiving VA compensation as a result of injuries or disease which occurred during the same period of military service.

Further, the proposition that VA compensation and military retired pay are based on the same period of service does not meet the test of logic. While non-disability retired pay is based on length of time served and grade attained, disability compensation is based on one or more events or conditions such as a wound, injury or disease.

For example, some soldiers in Vietnam were infected with a parasite which slowly destroys the eyesight. There is medical treatment which controls the condition and temporarily stops the parasite; however, because of side effects, intake of the medicine must be limited. Thus, the medicine is stopped until the parasite becomes active again, then is resumed. The soldier may remain on active duty so long as his eyesight meets the minimum standard. At some point, however, he will probably lose the sight in one or both eyes. To require that he give up military retired pay to receive VA compensation for his loss of vision because both were the result of the same period of service is not logical nor equitable. His retirement eligibility is the result of the period of service. The loss of vision is the result of the disease contacted while in the service. In the interest of equity the military retiree should be compensated for both length of service and the disability as is done for veterans who choose careers other than military service.

The Department of Defense has estimated that the cost in appropriated funds for fiscal 1989 could range from a maximum of $1.6 billion to a minimum of $1 billion. Since these figures do not take into account the fact that military retired pay is fully taxable, the actual cost after taxes are considered is more likely to be in the $700 million to $1 billion range.

Whatever the cost, the U.S. Government's obligation to its disabled veterans who invested their lives and their health in service to this great nation should be treated with at least the same respect and offered the same guarantee as those who have invested their money in government securities.

NAUS appreciates the opportunity to present its views on this subject, and the interest displayed by this committee on matters of importance to this nation's veterans.

TESTIMONY BY RUDY I. CLARK
DIRECTOR, MILITARY AND GOVERNMENT RELATIONS
AIR FORCE SERGEANTS ASSOCIATION
BEFORE THE SUBCOMMITTEE ON
COMPENSATION, PENSIONS AND INSURANCE
H.R. 303
U.S. HOUSE OF REPRESENTATIVES
APRIL 14, 1988

Mr. Chairman and distinguished members of the subcommittee, I am Chief Master Sergeant Rudy I. Clark, USAF, Retired, Director, Military and Government Relations. Thank you for the opportunity to present the views of the Air Force Sergeants Association, with respect to the proposed changes that would eliminate the antiquated offset between Veterans Administration Disability Compensation and military retired pay, H.R. 303.

We would urge this subcommittee to favorably consider correcting this outdated legislation, that has existed since March 3, 1891. When Congress enacted this law, payment of pensions to individuals on the active or retired list of the armed forces were prohibited. In our opinion, this law was established in 1891 because there was less than 1200 full-time military personnel. The majority of individuals were "citizen-soldiers" (reservists), who were sufficient in number to makeup the total force needed in a national emergency. The present proscription contained in Section 3104 (a) (1), title 38 by Public Law 85-857, as it affects disability compensation was approved by Congress in 1958, and is similar in wording to the 1891 law. In 1972 the draft was abolished and a new military era evolved into a highly qualified, extremely well-educated "all volunteer" armed force. Therefore, individuals who elect the military as a career choice should not be penalized when a disability is incurred during their service career.

We have heard all the arguments and read all of the surveys, comparing military service with civil service or private sector compensation. Most surveys conclude that military compensation cannot be compared with any other segment of our society's compensation programs. For example, if a military member incurs an injury or medical problem, which disqualifies him/her from performing duty in a particular career field, the member is not automatically separated from the service or placed on the disability retired rolls. Every effort is made to retrain service-connected disabled personnel to allow them to continue to function as productive members of the armed forces. We doubt that similar programs exist in the private sector.

We do not agree that allowing retired military members to receive their retired compensation and VA Disability Compensation, concurrently, without deduction from either, would be dual compensation for the same period of service. Military retired compensation is based on tenure; VA Disability Compensation is based on medical impairment; thereby, each compensation is inherently independent of one another. In fact, they are administered by two separate agencies, and the procedures used to compute the compensation are different. Therefore, how can these totally separate compensation annuities be defined as dual compensation?

We do agree with the Congressional Budget Office's (CBO) assumption letter, dated January 21, 1988, which states, "because H.R. 303 stipulates that no retiree should be paid twice for one disability; current law would be unchanged for people eligible to receive benefits from both DOD and the VA, based only on disability. The retirees affected by this prohibition are those with less than 20 years of service, because their DOD retirement benefit is based solely on their disabled status." The cost of implementing H.R. 303 has, as opinions, many estimates -- both pro and con -- pertaining to this legislation. We would submit to this subcommittee, that from recent cost estimates provided by the CBO, one area, possibly overlooked, is increased taxation on FULL military retirement compensation. Many increases in income will elevate an individual into the next highest tax bracket. As a result, the cost of implementing H.R. 303 would not be as significant as studies indicate.

Therefore, Mr. Chairman we must recommend to this subcommittee that you approve H.R. 303. There are clearcut discrepancies between civil service, the private sector and the military retirement disability programs. Since 1790 the government has recognized the need to provide some measure of economic security for those who have endured a physical disability as a result of military service. The basic inherent elements of the present system were put into place prior to World War I, and it is well known that the characteristics of the military forces retirement system versus private sector pensions have changed significantly. However, this antiquated law continues to disallow military disability retirement to be updated.

This concludes my statement, and again, thank you for this opportunity to appear before this subcommittee. I am prepared to respond to any questions you or your distinguished colleagues wish to ask.

WRITTEN COMMITTEE QUESTIONS AND THEIR RESPONSE

HON. MICHAEL BILIRAKIS TO LT. GEN. ANTHONY LUKEMAN, DEPUTY ASSISTANT SECRETARY OF DEFENSE, DOD

MICHAEL BILIRAKIS
9TH DISTRICT, FLORIDA

COMMITTEE ON ENERGY AND COMMERCE
ENERGY AND POWER
TRANSPORTATION, TOURISM AND
HAZARDOUS MATERIAL
OVERSIGHT AND INVESTIGATION

COMMITTEE ON VETERANS' AFFAIRS
HOSPITALS AND HEALTH CARE
COMPENSATION, PENSION AND INSURANCE

CHAIRMAN, TASK FORCE ON
THE ELDERLY
CONGRESSIONAL HUMAN RIGHTS CAUCUS
CONGRESSIONAL CLEARINGHOUSE
ON THE FUTURE
ENVIRONMENTAL AND ENERGY STUDY
CONFERENCE
TRAVEL AND TOURISM CAUCUS

Congress of the United States
House of Representatives
Washington, DC 20515-0909

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May 17, 1988

Lt. General Anthony Lukeman
Deputy Assistant Secretary of Defense
Military Manpower and Personnel Policy
Room 3E774
The Pentagon
Washington, D.C. 20301-4000

Dear General Lukeman,

I appreciated your able and forthright testimony presented at the April 14th hearing on H.R. 303 before the Veterans Affairs Subcommittee on Compensation, Pension and Insurance. I have some follow up questions which should assist in making the record complete.

✓ 1. Regarding the Military Trust Fund, what has happened to the funds withheld under the policy of "imputed contribution" as articulated by Assistant Secretary of Defense Roger Kelly during Department of Defense Appropriations hearings in the 92nd Congress in light of more recent DoD statements that military pay is in fact not depressed in order to account for retirement contribution? It would appear that those military retirees were paid depressed wages and have paid in part for their retirement. Please comment.

2. During your testimony, you stated that funding for the Military Trust Fund is derived from three sources. Could you provide an annual accounting since the establishment of the Fund of the dollar amounts for 1) contributions made by the Department of Defense; 2) transfers appropriated by Congress to service the unfunded liability; and 3) interest paid on the investments of the Fund? In addition, please provide the dollar amounts and the percentages of the total Trust Fund.

3. Please provide the annual outlays paid out from the Military Trust Fund to military retirees who retired with 20 years or more of service. Please provide these figures in dollar amounts and the percentages of the entire Trust Fund.

4. What is the unfunded liability for the Military Trust Fund?

5. Please provide the amount of the annual interest accumulated since the establishment of the Military Trust Fund. Please provide the dollar amount and as a percentage of the total Trust Fund.

6. What is the use of the interest derived from investments attributable to the Trust Fund?

7. It was not clear in your testimony at what year of service the Department of Defense makes the assumption that the servicemember will be a career servicemember.

8. At what year of service does the Department begin to contribute to the servicemember's retirement?

9. Please explain the procedure by which the Department of Defense determines contributions for a particular servicemember. It would seem that if the Department contributes a certain sum annually for a certain number of years, but the servicemember does not remain in the service through retirement to collect his retirement, that there would be surplus funds in the Trust Fund. Please comment.

✓ 10. Please explain the 6 assumptions which are taken into consideration by the DoD actuaries to determine the amounts contributed by the Department of Defense.

✓ 11. Please clarify your statement regarding the difference between the first assumption -- the number of military retirees who will receive VA disability, and the fourth assumption -- the number of "military retirees who eventually will go to the Veterans' Administration and have a medical finding that a disability exists..." Is the latter category those who are retired on military disability?

12. How is it possible to determine the number of military retirees, who sometime in the future, will receive VA disability and opt to waive their retired pay?

13. In summary, how is it possible to predict any of the 6 intangibles which are the basis for the Department's contributions to the Trust Fund? You state the DoD actuaries use historic data; it is indeed very possible that any or all of the six assumptions are subject to change and therefore DoD's annual contributions are not precise to the dollar amount?

14. How do you adjust for these assumptions if they fall short of projections or are too generous? How many times are adjustments made? On an annual basis? Monthly? How soon are adjustments made once a finding is made that the assumptions are incorrect?

15. Please explain accrual accounting with respect to the Military Trust Fund?

16. Has accrual accounting benefitted the Military Trust Fund?

17. It appears as though accrual accounting and the actuarial estimates have tripled the cost estimates of H.R. 303. Please comment on your statement that $762 million is waived by military retirees annually but cost estimates for the bill are as high as $2 billion. Please comment.

✓ 18. Upon review of your testimony, your comments regarding the potential higher costs of the bill are not completely clear to me. I have enclosed a page of the transcript of the particular exchange for your assistance. In order to get accurate cost estimates, you stated that you would have to review the current records of all servicemembers. This procedure is contrary to the assumptions you stated that DoD makes for funding the Trust Fund. Is it not true that DoD and Congressional Budget Office make cost estimates on past history?

19. How many servicemembers with 20 years or more of service are retired with military disability?

Thank you for your assistance and cooperation with this matter.

With best regards,

Sincerely,

Mike

Michael Bilirakis
Member of Congress

MB;aac
Enclosure

THE OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301-4000

FORCE MANAGEMENT
AND PERSONNEL

30 JUN 1988

Honorable Michael Bilirakis
House of Representatives
Washington, DC 20515

Dear Mr. Bilirakis:

This is in reply to your inquiry of May 17 concerning follow-up questions to the April 14 hearings on H.R. 303 before the Veterans Affairs Subcommittee on Compensation, Pension and Insurance.

Enclosed are responses to the 19 questions that you have asked. For ease of identification, each question has been numbered in the sequence asked, repeated, and followed by the answer. I hope this information will be helpful in the deliberations on H.R. 303.

Sincerely,

A Lukeman

A. Lukeman
Lieutenant General, USMC
Deputy Assistant Secretary
(Military Manpower & Personnel Policy)

Enclosure:
As Stated

1. Question: Regarding the Military Trust Fund, what has happened to the funds withheld under the policy of "imputed contribution" as articulated by Assistant Secretary of Defense Roger Kelly during Department of Defense Appropriations hearings in the 92nd Congress in light of more recent DoD statements that military pay is in fact not depressed in order to account for retirement contribution? It would appear that those military retirees were paid depressed wages and have paid in part for their retirement. Please comment.

Answer: The matter of an imputed contribution for retirement benefits was widely articulated during hearings on military active duty pay during the 1960s and 1970s. Also, the Pay Report of the first Quadrennial Review of Military Compensation included a recommendation for a vested retirement system based on the imputed compensation theory. The legislative history indicates that the House bills on pay accepted the imputed contribution theory; however, the Senate versions did not. In the conference reports on the legislation, the Senate version prevailed. Enclosed is an extract from the Military Compensation Background Papers that addresses this matter in detail. The body of evidence indicates that military pay levels were not depressed for an imputed contribution for the retirement benefit.

With regard to funds, prior to the 1984 establishment of accrual accounting for the military retirement system, military retired pay was on a pay-as-you-go basis. Annual appropriations were made to meet retired pay obligations. Similarly, active duty pay appropriations equaled the actual funds needed to pay the men and women on active duty. The appropriations did not include any amounts attributable to an imputed retirement contribution.

Chapter III.B.5.

Imputed Contribution for Retirement Benefits

Legislative Authority: None: The "retirement system" for members of the armed forces is "noncontributory."

Purpose: The standard reasons favoring explicit contributions by individual employees to retirement funds may be summarized as:

- Lower direct costs to the employer.
- The possibility of higher employee retirement benefits.
- Greater understanding and appreciation of the retirement plan by the employee.
- The belief that contributions give an employee a "contractual right" to a pension.[1]

Background: The military retirement system has been "noncontributory" since its inception. Three major studies in recent years have explored the issue of whether it should remain noncontributory. The so-called "Hook Commission," whose 1948 report and recommendations led to the introduction and enactment of the Career Compensation Act of 1949, recommended that the military retirement program be noncontributory.[2] A research group at the University of Michigan concluded in 1961 that Congress should not adopt a contributory plan.[3] In 1967 the First Quadrennial Review of Military Compensation recommended that a 6.5 percent retirement contribution be collected from the full military salaries of career members.[4] In 1970 the Gates Commission supported the First Quadrennial Review's recommendation[5] but did not address the subject in any detail.

The Hook Commission's reasons for recommending against establishment of a contributory military retirement system were as follows:

> A noncontributory plan of retirement is traditional with the military and particularly suited to a Government agency. Private industry, lacking the taxing power and the security of perpetual existence, wisely accumulates in advance the funds from which to pay retirement benefits, even though the employer's corporate existence should end. The Government has no need to accumulate such a fund as long as the power to tax exists. Other such Government funds are in reality only bookkeeping entries and the receipts of funds are in fact merged into the general funds of the Treasury and used as such for current expenses. They cannot be set aside years in advance to serve a particular purpose and be productive unless the Government is to move into ownership of the tools of production. Thus, with the fund itself serving no useful purpose, to establish a contributory plan or a funded noncontributory plan would only create a large extra expense to the Government in providing the administrative and clerical personnel

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[1] *A Study of the Military Retired Pay System and Certain Related Subjects*, REPORT TO THE SENATE ARMED SERVICES COMMITTEE BY THE STUDY COMMITTEE OF THE UNIVERSITY OF MICHIGAN, Committee Print, pp. 65-66, 87th Congress, 1st Session, July 1961 (cited hereafter as "*Study*").

[2] *Career Compensation For the Uniformed Forces*, A REPORT AND RECOMMENDATION FOR THE SECRETARY OF DEFENSE BY THE ADVISORY COMMISSION ON SERVICE PAY, pp. 65- 66, December 1948 (cited hereafter as "*Career Compensation*").

[3] *Study*, p. 68.

[4] *Modernizing Military Pay*, REPORT OF THE FIRST QUADRENNIAL REVIEW OF MILITARY COMPENSATION, Volume I, p. 56, November 1967 (cited hereafter as "*Pay Report*").

[5] *The Report of the President's Commission on an All-Volunteer Armed Force*, p. 62, February 1970.

necessary to deduct and record the contributions, real or fictitious, and to administer the so-called fund.[6]

In recommending against a contributory retirement system, the University of Michigan, on the other hand, noted (1) employee contributions represent only a small fraction of retirement benefit costs under any retirement system; (2) even in civilian plans, when a contributory pension plan is first implemented, a general pay raise covering all or part of the contribution is often necessary to compensate for the reduction in take-home pay that would otherwise occur; and (3) under a contributory military retirement program, the administrative costs associated with running an enormous savings bank with some 2 1/2 million accounts — 1961 figures — having a heavy customer turnover would offset — possibly overwhelm — any savings. For these reasons, the Michigan research group concluded that any Government cost savings resulting from a retirement contribution by military personnel would be small at best — possibly non-existent — and recommended against a contributory plan.

By 1967, when the *Pay Report* of the First Quadrennial Review was released, the House Armed Services Committee stated that military basic pay rates were lower by 6.5 percent than they otherwise would have been if members of the armed forces were required to make a retirement contribution. The First Quadrennial Review concluded that this imputed retirement contribution was inequitable to members who realized no value from it because they did not serve to retirement. Accordingly, a 6.5 percent retirement contribution — vested so that the survivor or survivors, if any, of a member who died before becoming eligible for retired pay could collect the amount contributed — was recommended. This contribution was to be collected only from so-called "career" members, defined in the *Pay Report* as officers, enlisted members in pay grades E-6 through E-9, and members in pay grades E-4 or E-5 with four or more years of service or with between two and four years of service plus a commitment to serve at least six years. The retirement contribution recommendation was fused with a further recommendation that the elements of basic pay, quarters, subsistence, Federal income tax advantage, and imputed retirement contribution be combined into a full military salary for career members.

A 1975 Wyatt Company study of the retirement plans of the 50 largest industrial companies and the 50 states also bears on the choice between contributory and noncontributory retirement systems.[7] This study concluded that the trend in the private sector continued to be toward noncontributory coverage, with 29 of the top-50 salaried pension plans being noncontributory, and with at least five major corporations having eliminated employee contributions in the preceding five years. In addition, and bolstering its own conclusions, the Wyatt study cited a 1975 Bankers Trust study of corporate pension plans as confirming that the majority of such plans were noncontributory and that the trend was toward noncontributory plans. The study also indicated, however, that most non-Federal public plans were contributory and that the trend for such plans was toward increased rates of contribution, although a limited number of States had reduced or eliminated employee contributions.

Quite apart from the controversy surrounding contributory and non-contributory retirement plans, it is clear that members of the uniformed services have never made explicit retirement contributions out of their active duty pay to fund future military retired and retainer pay. Whether active duty pay has in fact been reduced from the level at which it would otherwise have been established on account of an implicit, or imputed, retirement contribution is less clear.

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[6] *Career Compensation*, pp. 40-41.

[7] *Retirement Trends in Industrial and Public Pension Systems*, A Study Conducted by the Wyatt Company for the Department of Defense, 30 April 1975.

The Department of Defense in 1963 proposed military pay levels that it estimated would achieve comparability between military compensation and civil service salaries. With one major exception, the House Armed Services Committee accepted the proposed pay levels. The Committee did not accept that part of the DoD proposal that would have increased basic pay rates for personnel with less than two years of service. The Senate Armed Services Committee materially amended the House bill by (1) providing "under-2" increases for officers and for enlisted members in pay grades E-4 and E-5, (2) enlarging the bill's increases for pay grades O-1 through O-4 and E-4 through E-7, and (3) deleting all subsistence increases. Except for the "under-2" increases, the Senate amendment prevailed. Neither the Department of Defense nor the House or Senate Armed Services Committees ever indicated that the pay levels thus adopted — and enacted as the Uniformed Services Pay Act of 1963 — had been depressed by any percentage for an imputed military retirement contribution.

The 1964 military pay legislation was enacted to maintain a reasonable compensation trend for military personnel in relation to civil service employees. It provided an 8.5 percent basic pay increase for officers with less than two years of service and a 2.5 percent basic pay increase for all personnel with more than two years of service; it did not address the question of an imputed retirement contribution.

In 1965, the Department of Defense proposed a five percent increase in military pay for personnel with over two years of service "to maintain the 1963 relationship between military and civilian pay" and a 2.7 percent cost-of-living increase for personnel with less than two years of service. The House Armed Services Committee rejected the DoD proposal. Instead, it conducted its own study and concluded "beyond a reasonable doubt" that military pay increases had lagged behind those for civil service employees by 10-11 percent (after "shredding out" under-2 personnel) between 1952 and 1964. It accordingly reported out a bill that increased basic pay rates by an average of 10.7 percent, or more than double the percentage proposed by DoD. In connection with its bill, the Committee stated:

> After determination was made of the level of pay (including allowances) considered appropriate for each military grade, account was taken of an imputed 6 1/2 percent contribution to retirement on basic pay (except for enlisted personnel with less than 2 years' service). . . . The importance of this step is that it would set out "in the record" the actual amounts by which military pay scales are lowered because of the military "noncontributory" retirement system.[8]

The Senate Armed Services Committee did not accept the pay levels recommended in the House bill but instead increased basic pay rates by a flat six percent for officers with over two years of service and by 11 percent for enlisted personnel with over two years of service. The Senate Committee emphasized that the House proposal was incompatible with the then-current structure of the military compensation system and that, for its part, it did not want any structural change in that system. The Senate's flat-percentage-increase pay levels — with its concomitant no-structural-change point of view — was incorporated in the military pay legislation for 1965. It is clear from the evolution of this legislation that the imputed retirement contribution theory embraced in the House Armed Services Committee Report applied only to the pay bill it had reported out, that the Committee had effectively abandoned the theory when it agreed to the revisions incorporated in the Senate bill, and that, as of 1965, military pay levels had not in fact been depressed for an imputed retirement contribution.

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[8] House Report No. 549 (Committee on Armed Services), p.24, accompanying H.R. 9075, 89th Congress, 1st Session.

The 1965 situation was continued by the military pay legislation of 1966, which gave an across-the-board pay increase of 3.2 percent.

The military pay legislation of 1967, enacted as Public Law 90-207, 81 Stat. 649, further increased basic pay rates by 5.6 percent across-the-board. This increase in basic pay was equivalent to a 4.5 percent increase in regular military compensation (RMC),[9] and its purpose was to maintain the comparable relationship between RMC and General Schedule salaries of Federal civilian employees. There was no suggestion by either DoD or Congress that the military pay levels established in 1967 had been reduced for an imputed retirement contribution.

In addition to providing a basic pay increase in 1967, Public Law 90-207 also provided that whenever in the future the General Schedule salaries of Federal employees were increased a comparable increase was to be made in the basic pay of members of the uniformed services. Under this authority, military pay increases between 1967 and 1971 were made by Executive Order. These increases had no bearing on an imputed retirement contribution; they simply maintained the preexisting relationship between RMC and civil service salaries.

In January 1971 the Department of Defense submitted a fiscal year 1972 proposal to Congress to increase basic pay rates for personnel with less than two years of service and quarters allowances for personnel in pay grades E-1 through E-4 (four or less years of service) by an average of 36 percent over January 1971 levels. It was indicated that a second step was planned for fiscal year 1973 when recommendations would be forwarded that would make military pay fully competitive with civilian pay. At the request of the House Armed Services Committee, the FY 1973 program was developed and furnished to the Committee in February. DoD's FY 1973 proposal would have increased basic pay rates for personnel with less than two years of service by an average of 68.6 percent over January 1971 levels, raised basic allowance for quarters rates for all personnel to 100 percent of the FHA median of housing expenses for comparable income groups, and increased basic allowance for subsistence rates to the level of the DoD food cost index. In support of this recommendation, the Assistant Secretary of Defense for Manpower and Reserve Affairs testified as follows concerning the imputed retirement contribution question:

> I said that the increases recommended for fiscal year 1973 would bring regular military compensation to competitive levels, or what we call the military pay standard. The military pay standard has been established over a period of years by comparisons made between the job content of military positions and civilian positions within the civil service or governmental structure. . . . The military pay standard is constructed so that it recognizes that military pay does not include a retirement contribution; instead the competitive level of compensation which would be appropriate under a contributory retirement system is depressed by seven percent as an imputed contribution toward the member's retirement.[10]

The House did not accept the DoD recommendation that military pay levels be increased in two steps but instead reported out a bill that incorporated the proposed FY 1973 pay rates but provided that, instead of becoming effective in FY 1973, such rates were to become effective upon enactment. In its report on the bill, the House Armed Service Committee stated:

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[9] Under 37 U.S.C. §101(25), regular military compensation is defined as the total of the basic pay, basic allowance for subsistence, basic allowance for quarters (including variable and station housing allowances, if any), and the tax advantage accruing to members of the armed forces because of the non taxable status of the allowances that a member receives, directly or indirectly, on account of military service. (*See* Chapters II.B.1. and II.B.4., above, "Basic Pay" and "Federal Income Tax Advantage," respectively).

[10] Hearings of February 25, 1971 before the House Armed Services Committee, H.A.S.C. Document 92-2, p. 179, 92d Congress, 1st Session.

> The Congress in Public Law 90-207 defined Regular Military Compensation (RMC) as consisting of the following elements that service members receive in cash or in kind every payday: basic pay, quarters allowance, subsistence allowance and tax advantage (received because the quarters and subsistence allowances are not subject to Federal income tax).
>
> It is the Regular Military Compensation that is used to establish competitive military pay levels which bear a reasonable relationship to civilian wages for comparable levels of work. The RMC is based on a military pay standard so constructed that it recognizes that RMC does not include a specific retirement contribution. In other words, the military compensation is depressed by seven percent to reflect an imputed contribution towards the member's retirement.[11]

The House bill was substantively amended by the Senate, which reported out a bill containing only DoD's original FY 1972 proposal. In its report on this latter bill, the Senate Armed Services Committee commented on the imputed retirement contribution issue in these terms:

> Finally, it should be pointed out that since there is no accepted comparability system linking the various military and civilian pay grades it cannot therefore be reasonably said that military basic pay is being depressed by any percentage as an imputed contribution toward reducing military retired costs.[12]

Upon passage, the divergent bills of the House and Senate were referred to a joint House-Senate conference where the differences were resolved. The resultant military pay levels were lower than those of the House bill (DoD's FY 1973 proposal) but higher than those of the Senate bill (DoD's FY 1972 proposal). The House bill's average 68.6 percent basic pay increase for personnel with less than 2 years of service was agreed to, its BAQ increase to 100 percent of the FHA standard was scaled down to 85 percent of the standard, and its BAS increase was deleted. The compromise pay levels were enacted as part of Public Law 92-129 (85 Stat. 348) and became effective in November 1971.

As this chronological analysis of pay legislation shows, military pay levels were not depressed for an imputed retirement contribution prior to 1971. Military pay increases from 1972 through 1979 were made by Executive Order under authority of Public Laws 90-207 and 93-419. These increases simply maintained the relative position of military pay and civil service salaries; they had no bearing on an imputed retirement contribution. Pay increases for 1980 and 1981 were made by the Department of Defense Authorization Act of 1981 (Pub. L. No. 96-342, 94 Stat. 1090-1092) and the Uniformed Services Pay Act of 1981 (Pub. L. No. 97-60, 95 Stat. 989-992), respectively. The pay increases authorized by these latter two pieces of legislation exceeded the pay raises awarded General Schedule civilian employees — but there was no indication that the reason for the more generous treatment accorded members of the uniformed services had anything to do with a retirement contribution, whether imputed or not. Indeed, the issue was never raised at all. Instead, the relatively greater increases for members of the uniformed services stemmed from a felt need to improve manning and retention levels in the various services and was, if anything, a rather straight-forward response to a perceived supply-demand imbalance.[13] Nor is there any suggestion in any subsequent legislation relating to military pay that an imputed retirement contribution was to be taken into account in connection with pay increases.[14] If regular military compensation is currently depressed for an imputed retirement contribution, the imputed contribution could only have been created in 1971 by Public Law 92-129.

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[11] House Report No. 92-82, pp. 24-25, accompanying H.R. 6531, 92nd Congress, 1st Session.

[12] Senate Report No. 92-93, p. 31, accompanying H.R. 6531, 92nd Congress, 1st Session.

[13] *See* generally Chapter II.B.1., "Basic Pay," above. In particular, *see* text accompanying footnotes 16-23 of Chapter II.B.1.

If there were in fact an imputed retirement contribution, logically it would seem it should be deducted primarily or wholly from basic pay, since that is the only element of RMC used in the computation of retired pay. Public Law 92-129 did not demonstrably depress basic pay rates, because it left basic pay rates for personnel with more than two years of service unchanged (except for small increases in some grades to prevent "under-two" raises from causing an undue compression). As to the depression of RMC as a whole for this purpose, it must be recognized that Congress did not specifically accept the "military pay standard" used by DoD as the basis for its FY 1973 proposal as a legitimate benchmark for comparing military and civil service pay levels. Moreover, even had it expressly approved the proposition that the increases recommended for FY 1973 would establish a competitive level of military compensation equal to 93 percent of the level which would be appropriate under a contributory retirement system, the fact that the RMC level enacted in Public Law 92-129 was different from the RMC level proposed by DoD for FY 1973 produced an inevitable distortion in the original calculations. These circumstances compel a conclusion that military basic pay rates are not currently depressed for an imputed retirement contribution. The level of RMC as a whole may be lower by some percentage than it otherwise would have been under a contributory military retirement system; however, in the absence of an accepted military pay standard, neither the proposition that RMC is depressed by seven percent, or any other exact percentage, nor the premise that any such reduction — assuming there is one — resulted from an imputed retirement contribution, is demonstrable.

A separate but related issue involves the establishment of the Department of Defense Military Retirement Fund. In the Department of Defense Authorization Act, 1984 (Public Law No. 98-94, §925, 97 Stat. 644-648), established an accrual accounting system for military retired and retainer pay. Under that system, funds are appropriated every year to defray future retirement cost liabilities. The appropriated funds are charged to the Department of Defense manpower budget and are transferred to a special fund known as the Department of Defense Military Retirement Fund, which is administered by the Department of the Treasury.

The establishment of the Military Retirement Fund in no way affected the basic nature of the military retirement system. The system is still noncontributory, and Congress, in establishing the Fund, in no way indicated that military pay was artificially depressed because of payments into the Fund. Congress's expressed purpose in establishing the Fund was to provide funding for military retirement obligations at the time those obligations are incurred. As stated by the House Armed Services Committee:

> . . . From the Federal government's perspective, the issue of funding is primarily a matter of timing. Should funds be raised by taxing and borrowing when the obligation becomes due, or should funds be set aside through taxing and borrowing when the obligation is incurred?[15]

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[14] In this connection, *see* discussion of the establishment of the Department of Defense Military Retirement Fund in Appendix I hereto, below.

[15] House Report No. 98-107 (Committee on Armed Services), p. 225, accompanying H.R. 2969, 98th Congress, 1st Session (1983). *See* House Report No. 98-352 (Committee of Conference), p. 228 and Senate Report No. 98-213 (Committee of Conference), p. 228, accompanying S. 675, 98th Congress, 1st Session (1983).

The establishment of the Department of Defense Military Retirement Fund provided an answer to the question — funding of future military retirement liabilities should be made when the obligation is incurred.[16]

Notes

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[16] For more background on the Department of Defense Military Retirement Fund, *see* Appendix I, "Department of Defense Military Retirement Fund." For a discussion of the relationship between the accrual accounting system established in the 1984 DoD Authorization Act and modifications to the military retirement system effected by the Military Retirement Reform Act of 1986 (Public Law No. 99-348, 100 Stat. 682 *et seq.*), *see* Chapter III.B.1. hereof, "Nondisability Retired and Retainer Pay."

2. Question: During your testimony, you stated that funding for the Military Trust Fund is derived from three sources. Could you provide an annual accounting since the establishment of the Fund of the dollar amounts for 1) contributions made by the Department of Defense; 2) transfers appropriated by Congress to service the unfunded liability; and 3) interest paid on the investments of the Fund? In addition, please provide the dollar amounts and the percentages of the total Trust Fund.

Answer:

Military Trust Fund Income

(In billions of dollars and as a percent of the fund balance* at the end of the year)

Fiscal Year	DoD Contributions		Appropriation to Amortize Unfunded Liability		Investment Income		Total	
1985	$17.0	144.1%	$ 9.5	80.5%	$1.1	9.3%	$27.6	233.9%
1986	17.4	70.7	10.5	42.7	2.5	10.2	30.4	123.6
1987	18.3	47.0	10.5	27.0	3.6	9.3	32.4	83.3

* The fund balance (on a book value basis) reflects actual cash disbursements during the year. On September 30, 1987, assets in the fund totaled $38.9 billion.

3. Question: Please provide the annual outlays paid out from the Military Trust Fund to military retirees who retired with 20 years or more of service. Please provide these figures in dollar amounts and the percentages of the entire Trust Fund.

Answer:

Military Trust Fund
Outlays to Retirees with 20 or more Years of Service

(In billions of dollars and as a percent of the fund balance at the end of the year)

Fiscal Year	Outlays	
1985	$14.7*	124.6%
1986	16.4	66.7
1987	16.8	43.2

* Disbursements are on a cash basis. Beginning December 1984, entitlements obligated for a month are paid at the beginning of the following month. Prior to this date, entitlements were paid at the end of the month of obligation. Consequently, FY85 disbursements include only 11 months of payments.

4. Question: What is the unfunded liability for the Military Trust Fund?

Answer: As of September 30, 1987 the unfunded accrued liability of the Military Trust Fund was $546.3 billion.

5. Question: Please provide the amount of the annual interest accumulated since the establishment of the Military Trust Fund. Please provide the dollar amount and as a percentage of the total Trust Fund.

Answer: The Military Trust Fund received a total of $7.2 billion in investment income through September 30, 1987. This is 18.5% of the Fund balance on September 30, 1987.

6. Question: What is the use of the interest derived from investments attributable to the Trust Fund.

Answer: The funds available in the Trust Fund for meeting future military retired pay obligations are composed of the normal cost contribution by DoD plus interest earned on those contributions. Therefore, the investment income derived from interest remains in the Trust Fund and will be used, together with the normal cost contributions by DoD, to meet future retired pay obligations for members on active duty.

7. Question: It was not clear in your testimony at what year of service the Department of Defense makes the-assumption that the servicemember will be a career servicemember.

Answer: DoD makes no such general assumptions. The DoD Actuary develops detailed decrement rates based on past experience which vary by (1) officer and enlisted, (2) years of service, and (3) age. Based on current decrement rates, 14 percent of a typical group of new-entrants will attain 20 years of active duty service and become for nondisability retirement from active duty.

8&9. Question: At what year of service does the Department begin to contribute to the servicemember's retirement?

Question: Please explain the procedure by which the Department of Defense determines contributions for a particular servicemember. It would seem that if the Department contributes a certain sum annually for a certain number of years, but the servicemember does not remain in the service through retirement to collect his retirement, that there would be surplus funds in the Trust Fund. Please comment.

Answer: As required by law, DoD's contributions to the Fund are calculated on an aggregate basis rather than on an individual basis (aggregate entry-age normal cost funding method). For FY88 the total DoD contribution will be equal to 51.2% (full-time normal cost percentage) of full-time basic pay and 26.1% (part-time normal cost percentage) of part-time basic pay. The aggregate entry-age normal cost percentages are those level percentages of pay that must be contributed over the entire active career of a typical group of new-entrants to pay for all the expected future retirement benefits of the group. To obtain these normal cost percentages, basic pay and benefits are projected using expected continuation rates, disability rates, normal retirement rates, death rates, salary scale increases, CPI increases and investment income on the Trust Fund. If the experience develops as assumed, the Trust Fund will be just sufficient to pay retirement benefits. In other words, actuaries fully anticipate that many members will not make it to retirement. Trust Fund contributions would be much higher if these assumptions were not made. This is standard actuarial practice (as required under law) for all private and public plans using funding methods.

10. Question: Please explain the 6 assumptions which are taken into consideration by the DoD actuaries to determine the amounts contributed by the Department of Defense.

Answer: The DoD actuary determines full-time and part-time aggregate entry-age normal cost percentages which are applied to basic pay to determine the amounts to be contributed by DoD. To determine these normal cost percentages, the DoD actuary projects basic pay and benefits 100 years into the future using hundreds of rates and assumptions based on an analysis of past experience. Rates are developed separately for the active duty force, the Selected Reservists and the retirees. The active force rates consist principally of decrement rates related to the probabilities by which a member leaves a category of Military Service for a specific cause. The specific cause may be withdrawal from active duty, death while on active duty, nondisability retirement, disability retirement or transfer to another category of Military Service. In addition, active rates include reentrant rates (rates for those who were on active duty at year end and who were not on active duty a year earlier but are not new entrants) and ratios for promotion and merit pay increases.

Additional rates include the Reserve rates which consist of (1) the distribution of new-entrants or reentrants into the Selected Reserve, (2) continuation rates, and (3) promotion and longevity scales. Additionally, the retiree decrement rates are used to predict death, "other" losses from retired pay status, and rates of transfer from temporary disability to permanent disability. Rates developed from other than DoD sources include divorce rates, remarriage rates, child termination rates, and survivor death rates.

Additional parameters developed from DoD experience include (1) the percentage of new retirees who have full VA waivers, (2) the percentage of retirees having a VA offset and the relative size of the offset, and (3) the percentage of members who have elected spouse/child coverage under the Survivor Benefit Plan.

The economic assumptions have a very important impact on the determination of the normal cost percentage. These include (1) the expected annual rate of inflation, (2) the expected annual rate of increase in military salary scales, and (3) the expected annual rate of interest.

All of the rates and parameters described above are approved by the presidentially-appointed 3 member Board of Actuaries, using data and experience studies provided by the DoD actuary.

11. Question: Please clarify your statement regarding the difference between the first assumption--the number of military retirees who will receive VA disability, and the fourth assumption--the number of "military retirees who eventually will go to the Veterans' Administration and have a medical finding that a disability exists...." Is the latter category those who are retired on military disability?

Answer: That category of members may, or may not, be retired under the military disability retirement system. The military disability retirement system provides a means to remove members from military service when their physical condition prevents the effective performance of military duties. It provides a payment to members forced by their disability to discontinue military service when found to be physically unfit to perform the duties of their office or grade.

By contrast, VA disability compensation is paid to a veteran after medical evaluation and determination by the VA of the service-connected percent of disability. Whether a member is retired from the military for disability or nondisability reasons is not a factor; rather, the service connections of a disabling condition is predominant. The VA disability compensation is primarily designed as a supplement because of lost earning capacity due to disease or injury resulting from military service. Basically, the VA disability compensation is recognition by the Government of its direct responsibility for the impaired earning capacity.

12. How is it possible to determine the number of military retirees, who sometime in the future, will receive VA disability and opt to waive their retired pay?

Answer: The DoD actuary analyzes past experience and develops an assumption concerning future waivers of retired pay based on that past experience. If the DoD actuary revised the assumptions and assumed that there would be no future waivers of retired pay, the projected future benefits would increase and the normal cost percentage would increase. This would then increase all future DoD contributions to the Trust Fund. Since projected future benefits would increase for all members, not just new entrants, such a change in assumption would also increase the unfunded liability and result in a corresponding increase in the amount that Congress would need to appropriate to amortize the unfunded liability.

13. Question: In summary, how is it possible to predict any of the 6 intangibles which are the basis for the Department's contributions to the Trust Fund? You state the DoD actuaries use historic data; it is indeed very possible that any or all of the six assumptions are subject to change and therefore DoD's annual contributions are not precise to the dollar amount?

Answer: The actual experience can be expected to vary to some extent from the DoD actuary's assumptions, with the result that DoD's contributions are not precise to the dollar amount. However, the amounts are scientifically derived to reflect the best estimate of costs.

14. Question: How do you adjust for these assumptions if they fall short of projections or are too generous? How many times are adjustments made? On an annual basis? Monthly? How soon are adjustments made once a finding is made that the assumptions are incorrect?

Answer: The DoD actuary analyzes the experience gains and losses to the Fund on an annual basis. These gains and losses create changes in the unfunded liability which are approved and amortized by the Board of Actuaries over a 30-year period through annual payments to the Fund appropriated by Congress. The first amortization payment is made one year after the calculation of the gain or loss.

15. Question: Please explain accrual accounting with respect to the Military Trust Fund?

Answer: Effective with the introduction of accrual accounting in FY85, the DoD budget contains only the accrual (normal cost) contribution. This is calculated as a level percentage of basic pay that must be contributed over the entire active career of a typical group of new-entrants to pay for all the future retirement benefits of that group. Effective with FY87, Congress mandated that separate accrual (normal cost) contributions be calculated for the active duty (full-time) and Selected Reservist (part-time) forces. For FY88 these accrual (normal cost) contributions are 51.2% of full-time basic pay and 26.1% of part-time basic pay.

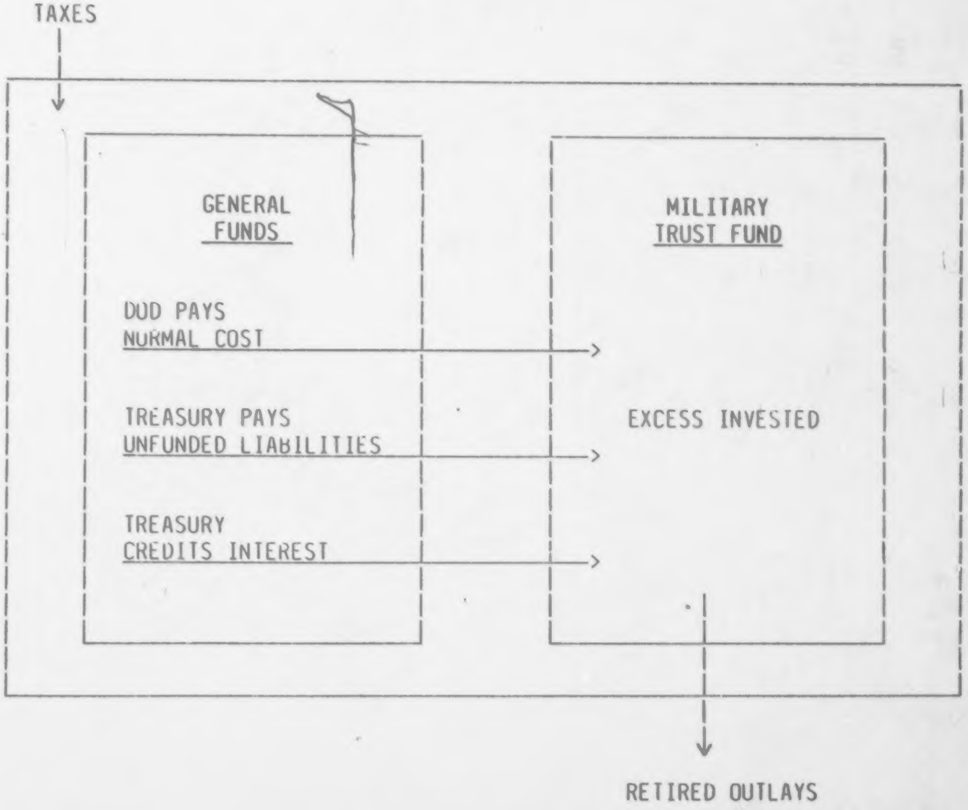
Since normal cost contributions had not been made for service prior to the introduction of accrual accounting, there was an initial unfunded accrued liability as of September 30, 1984, of $528.7 billion. There also can be changes in the unfunded liability due to changes in benefit formulas, changes in actuarial assumptions, and due to actual experience deviating from expected experience (gains and losses). The Board of Actuaries determined that the initial unfunded accrued liability of the system should be amortized with payments equal to 33% of the second preceding fiscal year's basic payroll. Additionally, the Board approved a method that amortizes changes in the unfunded liability over 30 years by payments that increase in absolute value at the same rate as the annual long-term basic pay scale assumption (currently 6.2%). These payments to amortize the unfunded liability are appropriated by Congress and do not impact DoD's budget.

The attached Table I demonstrates the flow of funds through the Trust Fund. At the beginning of each year, the Treasury will transfer into the Fund a payment on the unfunded liabilities as directed by the Secretary of Defense and approved by the Board of Actuaries. At the end of each month, DoD will transfer into the Fund the accrual contribution (normal cost) obtained by multiplying the annual normal cost percentage by the basic pay paid each month. During the year the Treasury will credit the fund with interest earned on the investments of the Fund. Near the end of each month the Fund will be debited by the amount of the monies needed by DoD to pay retirees and survivors. Of these transactions only the normal cost payments by DoD into the Fund affect DoD's budget.

Table I also shows the effect of accrual accounting on the Unified Budget and the deficit. Any amount placed in the Fund in a particular year in excess of the amount needed to pay retirees is a general fund expenditure. At the same time, it is income to the Military Trust Fund. The two transactions cancel each other out with no effect on the Federal Unified Budget. Consequently, accrual accounting has no effect on the deficit. The debt will increase since Treasury will issue bonds to meet the extra cost, and the Military Trust Fund will purchase these bonds as an investment. Only outlays to retirees affect the deficit. Only normal cost contributions affect the DoD budget.

TABLE I

UNIFIED BUDGET
OF FEDERAL GOVERNMENT


TAXES
GENERAL FUNDS
DOD PAYS NORMAL COST
TREASURY PAYS UNFUNDED LIABILITIES
TREASURY CREDITS INTEREST
MILITARY TRUST FUND
EXCESS INVESTED
RETIRED OUTLAYS

16. Question: Has accrual accounting benefited the Military Trust Fund?

Answer: Yes. The Military Trust Fund was established at the same time as accrual accounting was implemented. It is an integral part of accrual accounting. Without accrual accounting there would be no reason to have such a Fund.

17. Question: It appears as though accrual accounting and the actuarial estimates have tripled the cost estimates of H.R. 303. Please comment on your statement that $762 million is waived by military retirees annually but cost estimates for the bill are as high as $2 billion. Please comment.

Answer: As of September 30, 1987, $762 million of retired pay was being waived in favor of VA benefits by nondisabled retirees. An additional $707 million was being waived by disabled retirees for a total of $1.47 billion being waived annually as of September 30, 1987. Our cost estimates assumed that the bill would eliminate all of these offsets for a total increase in outlays (and corresponding increase in the federal deficit) for FY88 of $1.6 billion. This impact is quite independent of whether or not accrual accounting is in effect. The excess of the $1.6 billion over the $1.47 billion is due to retired pay increases in FY88 and to an increase in retirees over the year. The estimated increase in the DoD accrual (normal cost) contribution would be $1.5 billion. Using similar assumptions we estimated that the first annual payment to amortize the resulting increase in unfunded liability would be approximately $1.8 billion.

Without a manual comparison of DoD and VA records, it would be quite impossible for us to determine what offsets might continue due to DoD and the VA compensating the retiree for the same disability. An additional complicating factor is that many of the DoD disabled retirees have over 20 years of active service and were eligible to retire based on service alone.

18. Question: Upon review of your testimony, your comments regarding the potential higher costs of the bill are not completely clear to me. I have enclosed a page of the transcript of the particular exchange for your assistance. In order to get accurate cost estimates, you stated that you would have to review the current records of all servicemembers. This procedure is contrary to the assumptions you stated that DoD makes for funding the Trust Fund. Is it not true that DoD and Congressional Budget Office make cost estimates on past history?

Answer: Under the accrual accounting technique of the military retirement system established and codified at 10 USC 1461, et seq., there are two types of costs that must be addressed with any proposed change that relates to military retired pay. The first is what is called the normal cost expressed as a percentage of active duty basic pay. This cost is the money that would have to be set aside today with interest to pay for the future benefits of the current force. To arrive at these costs, certain actuarial projections must be made based on various assumptions such as wage growth, interest rates, inflation, and force decrement rates. The assumptions are set by the DoD Retirement Board of Actuaries as required by law (10 USC 1464). Once the economic and other assumptions are set, the normal cost can be determined. This cost is the amount contributed by the Department of Defense to the Military Retirement Fund to pay for the future benefits of the current force. It is also the amount that appears in the DoD budget for which Congress makes appropriations to the Department and is an intergovernmental fund transfer within the unified budget. The effect of H.R. 303 on the future retired pay of the current force would be included in the normal cost as part of the cost estimates. As such, historical data of the effect of H.R. 303, to include the prohibition of dual payment if based on the same disability, would have to be developed. Presently, there is no such body of historical data available to be applied in actuarial projections to construct an accurate estimate of the normal cost.

By contrast, the other cost is the amount that would have to be paid from the Fund to those members already retired and entitled to retired pay. These costs are amounts actually spent by the Government as outlays and are the cost amounts that increase the deficit. The expenditures from the Fund are not part of the Defense budget or appropriation. This cost is the amount actually paid out of the unified budget of the United States rather than an intergovernmental fund transfer within the unified budget. To determine these costs, it is necessary to know how many members would enter into an entitlement status and receive payments from the Fund. H.R. 303 would remove the waiver of retired pay requirement and permit the dual payment of military retired pay and Veterans' Administration disability compensation unless the award of both was based on the same disabling conditions. It is the same disabling condition standard that would require a manual review of the military records as well as a similar review of the VA records in order to determine if the two payments were awarded based on the same condition. Only after such an exhaustive procedure could an accurate cost be determined as it concerns actual payments from the Fund and the resulting increase in the deficit.

19. Question: How many servicemembers with 20 years or more of service are retired with military disability?

Answer: As of September 30, 1987 about 53,000 military retirees with 20 or more years of service are retired on disability.